143-74

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 158.

JOHN TYLER, APPELLANT,

vs.

SARAH C. SAVAGE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED OCTOBER 6, 1888.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 158.

JOHN TYLER, APPELLANT,

vs.

SARAH C. SAVAGE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	1	1
Exhibit A—Letter of John Tyler to Mrs. S. C. Savage, April 10, 1884	18	8
B—Letter of John Tyler to Mrs. S. C. Savage, December 8, 1884	19	9
C—Statement of receipts and disbursements from June 1, 1884, to June 1, 1885	21	10
D—Annual report to stockholders, June 1, 1885	21	10
E—Letter of John Tyler to Mrs. S. C. Savage, August 4, 1885	24	11
F—Charter of Virginia Oil Co.	25	12
G—Statement of account	29	14
Order to show cause	30	14
Subpœna	31	15
Marshal's return	33	16
Order appointing receiver, &c.	33	16
Order to non-resident defendants	35	17
Bond of receiver	36	17
Answer of John W. Otley	37	17
Exhibit A—Statement of earnings of Virginia Oil Co. for year ending May 31, 1882	46	22
B—Balance-sheet of Virginia Oil Co.	47	23
Appearance of Virginia Oil Co. *et al.*	49	24
Order on other defendants to appear, &c.	49	24

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 20, 1891.

	Original.	Print.
Order to plead, &c.	49	24
Order *pro confesso* as to Tanner *et al.*	49	24
Answer of John Tyler	50	24
General reply	56	27
Order *pro confesso* as to Virginia Oil Co. *et al.*	56	27
Receiver's report	57	27
Exhibit A—Statement	58	28
Order appointing new receiver and referring cause to master, &c.	59	29
Receiver's bond	63	30
Order on clerk to pay cost of publishing master's notice	64	31
Receiver's report of sale	65	31
Order approving receiver's report of sale	66	32
Order on clerk to pay taxes	67	32
Commissioner's report	68	33
Master's notice	77	37
Deposition of C. W. Tanner	79	38
Deposition of C. W. Tanner (recalled)	81	40
Deposition of John Tyler	91	44
Exhibit A—Statement of Virginia Oil Co., June 1, 1884	107	53
Deposition of W. E. Tanner	108	53
Deposition of John Tyler (resumed)	111	55
Deposition of John W. Otley	116	57
Admissions of counsel for Otley	126	63
Exhibit 1 (C. W. Tanner)—Extract from minutes of board of directors, November 1, 1883	127	63
Commissioner's certificate	127	63
Exceptions of complainant to commissioner's report	128	63
Final decree	129	64
Allowance of appeal	131	64
Form of writ of error	132	65
Bond	133	66
Clerk's certificate	135	66

1 In the Circuit Court of the United States for the Eastern District of Virginia.

RICHMOND, *Virginia:*

SARAH C. SAVAGE
vs.
THE VIRGINIA OIL COMPANY & *als.* } No. 393. In Equity.

Be it remembered that heretofore, to wit, on the 11th day of December, A. D. 1885, came the complainant, Sarah C. Savage, and filed in the clerk's office of the circuit court of the United States for the eastern district of Virginia, at Richmond, her bill of complaint against the defendants in the above-entitled cause; which bill of complaint, together with the exhibits therewith, is as follows, viz:

Bill of Complaint.

In the Circuit Court of the United States for the Eastern District of Virginia.

To the hon. judges of said court:

Sarah Chauncey Savage, a resident of the city of Philadelphia and a citizen of the State of Pennsylvania, suing for herself and all others, creditors of the Virginia Oil Company, who will make
2 themselves parties to this suit on the usual terms, brings this her bill against the Virginia Oil Company, incorporated under the laws of Virginia and having its principal office in the city of Richmond, in the said State; John Tyler, president of the said company, and in his own right; John W. Otley, C. W. Tanner, Isaac Davenport, Jr.; J. H. Montague, C. E. Belvin, late directors in the said company, and residents of the said city of Richmond and citizens of the State of Virginia, and Joseph D. Evans and J. F. Crane, residents of the city of New York and citizens of the State of New York; and thereupon your oratrix complains and says that, being anxious to secure a business position for her son, H. C. Savage, she was referred by Col. Wm. E. Tanner, of the city of Richmond, Va., with whom she had business transactions, to John Tyler, president of the Virginia Oil Company, of which company C. W. Tanner, a son of Col. Wm. E. Tanner, was a member.

Through Col. Wm. E. Tanner she opened negotiations with the said Tyler, and was informed that she could secure a position equivalent to that of assistant secretary in the company for her son by the investment of ten thousand dollars. This investment she was willing to make in the shape of a loan well secured, but the said Tyler declined to take the sum as a loan, and required that she must purchase of the company that amount of its capital
3 stock at its par value. In order to induce her to purchase the said stock the said John Tyler, as president of the said company, wrote and sent her the letter herewith filed, dated April 10th, 1884, which is marked (A) and prayed to be taken as a part

of this bill. This letter entered into the reason why the sale of stock was preferred to a loan, and made statements as to the condition of the company, its past business and future prospects, upon which your oratrix relied, and had a right to rely, as a basis for the investment of her money. The important statements therein made may be recounted as follows:

1. The then capital stock was $18,300.00, with authority from the stockholders to increase it to $30,000.00.

2. The last dividend declared was seven per cent. semi-annual, and the current fiscal year would end on the first of June.

3. The manufactures of the company were paying a large profit, and were favorably known throughout a wide territory—North, South, and West.

4. There had been a late decrease of expenses, and the outlook for business was better than ever before.

5. By adding moderately to their capital they could without much risk double their business.

6. A gentleman of New York had bought thirty shares of the stock at par within the last ten days.

With these statements from the president of the company,
4 to whom your oratrix had been referred as an honorable man, she concluded that the stock of the company was a safe investment, and she consented to take the stock instead of loaning the money, which was her preference, but which the said letter assured her would not suit the company. She thereupon paid into the treasury of the company ten thousand dollars, to wit, on the 19th day of May, 1884, and received a certificate for one hundred shares of stock, which she still holds, and which will be produced at the proper time.

In accordance with her understanding with Mr. Tyler, her son was given a position at a salary of eight hundred dollars per annum, and he performed the duties assigned to him until the suspension of the office work.

When the first of December, 1884, arrived your oratrix was not informed of the declaration of the semi-annual dividend she has been led to expect, and on the 5th of that month wrote to Mr. Tyler a letter of enquiry concerning it. In reply she received a letter from him as president, dated 8th Dec., 1884, and herewith filed, marked (B), as a part of this bill. By this letter he stated that the depression of business which had caused payments to come in very slowly had induced the company to omit a semi-annual declaration of dividend, and he added that "the business of the last six months shows a profit over and above all expenses."

5 When the first of June, 1885, arrived, your oratrix received no notice of dividend, and some weeks later she received a statement of the business of the company for the fiscal year, which is herewith filed, marked (C), as a part of this bill, showing a loss of $3,602.47, and a circular signed by the said Tyler as president, which is herewith filed, marked (D), as a part of this bill.

This circular states that a profit was made during the first six or seven months of the year, and the loss is charged to the last five or

six months. It further states that it had become a matter of vital importance to reduce the expenses of the company, and it suggests that only three persons be retained on salaries: one for the office, one for the factory and city work, and one for traveling. This, it states, would save $1,280.00 of salaries per annum. This suggestion involved the striking from the pay-roll of Allan Tyler, the son of the said John Tyler, whose salary as assistant in the office was $480 per annum, and of the son of your oratrix, whose salary was $800.00. In reply to a message conveyed through her son with regard to this circular, your oratrix received from the said John Tyler a letter dated Aug. 4th, 1885, which is herewith filed, marked (E), as a part of this bill. In this letter Mr. Tyler states that the company owed
6 him between five and six thousand dollars, borrowed money, and proposes that if your oratrix will assume this debt to him he will resign his position as president and allow her son to remain in the employment of the company. This proposition, which was remarkable to say the least of it, was not acted on, and your oratrix made a trip to Richmond to try and get something more satisfactory concerning the affairs of the company. She was told by Mr. Tyler that he believed that the company had assets enough to pay its liabilities and it had been determined, as she was informed, to wind up its affairs, and in doing so to stop all of the salaries of the officers on 1st September ensuing. The son of Mr. Tyler, and Mr. C. W. Tanner, as a new firm, were to occupy the store-house and had purchased or were about to purchase part of the stock on hand at cost price. With this information, your oratrix, fearing that her investment was in danger of being lost, deemed it best to employ counsel to represent her in winding up the affairs of the company. Upon the investigation of her counsel she finds that she has been deceived by the misrepresentations of Mr. Tyler and is in danger of suffering great loss thereby, and has determined to file her bill for relief.

Your oratrix now finds and charges that for some time previous to 1881 the said John Tyler and John W. Otley, under the firm
7 name of John Tyler & Co., conducted in the city of Richmond a business in oils, railroad grease, &c.; that in the spring of that year they determined to get up a chartered company for the conduct of their business, and together with C. W. Tanner, J. H. Montague, Isaac Davenport, Jr., and C. E. Belvin applied to the judge of the circuit court of Richmond, Va., for a charter, to wit, on the 21st day of May, 1881, which was granted on that day and was lodged for record on the 23rd of May, 1881, in the office of the secretary of the Commonwealth. A duly certified copy of the said charter is herewith filed, marked (E), and prayed to be taken as a part of this bill. By section 60 of chapter 57 of the Code of Virginia, authorizing the judges of the circuit courts to grant such charters, the lodging of the charter with the secretary of the Commonwealth made the applicants a corporation, and the officers and directors named in the application were to continue as such for one year thereafter.

The object for which the said company, styled the Virginia Oil

Company, was chartered was stated to be "the refining and wholesale and retail dealing in petrolium oils; the manufacture and sale of illuminating and lubricating oils and compounds, including animal, mineral, and vegetable oils; the right of prospecting and boring for oils, and the privilege of buying and selling, on
8 commission or otherwise, crude petrolium and other materials, used either separately or in combination for illuminating and lubricating purposes." The minimum capital was put at $15,000.00 and the maximum at $300,000.00, and John Tyler was named president, and the other five corporators directors, the law requiring that number.

The parties at once issued certificates of paid-up stock in the "Virginia Oil Company" to themselves, dated 21st May, 1881, as follows:

To John Tyler,	50 shares		$5,000 00
" John W. Otley,	50 shares		5,000 00
" C. W. Tanner,	50 shares		5,000 00
". I. Davenport, Jr.,	1 share		100 00
" J. H. Montague,	1 share		100 00
" C. E. Belvin,	1 share		100 00
Aggregating	153 shares		$15,300 00

And on the 12th Nov., 1881, they sold and issued to Joseph D. Evans, of New York, thirty shares, of the par value of $100.00, making in all 183 shares of the par value of $18,300.00.

How these shares were paid for your oratrix is not informed, except as to the shares of John Tyler and John W. Otley. The books kept by the concern show that no money was paid by them for their stock, but their stock account is balanced by the following entry as of May 21st, 1881, between the Virginia Oil Company and themselves:

9 " Dr.

Amount of inventory turned over	$2,450 51
Mdse., balances, $267.55, & cash $46.50	314 05
Machinery and fixtures	395 75
Amount of stock allowed J. Tyler and J. W. Otley in consideration of good will, formulas, &c., of John Tyler & Co.	8,486 84

Cr.

John Tyler's stock	$5,000 00	
John W. Otley's stock	5,000 00	
To John Tyler for am't due him by the business of John Tyler & Co.	1,647 15	
	$11,647 15	$11,647 15

It will be seen that the tangible property turned over by them to

the company, after deducting the charge of $1,647.15, amounted to only $1,513.16.

The corporation was evidently obtained in the interest of John Tyler, John W. Otley, and C. W. Tanner, and the other members were induced to come in that the requisite number of directors might be obtained.

John Tyler as president, John W. Otley as superintendent, and C. W. Tanner as secretary and treasurer were each paid a salary, believed to be as much as $1,500.00 per annuma piece, and on the 1st June, 1882, at the end of the first year, dividends of twenty
10 per cent. upon the original capital stock, and seven per cent. upon the shares of Joseph D. Evans, which had been held about six months, were declared and paid, amounting to $3,270.

It is hardly possible, in view of the subsequent history of the company, that these dividends were earned, as since that date no dividend whatever has been paid, and now the said company is admitted to be insolvent.

Your oratrix would further show that on the 3rd April, 1884, the stock of the said John W. Otley was surrendered to the company, and he was paid $2,500.00 therefor, which is at the rate of fifty cents upon the dollar, and his duties and salary as superintendent ceased. The stopping of his salary is evidently the reduction of expenses alluded to by the said Tyler in his letter of April the 10th, 1884.

If this purchase and the original payments of Tyler and Otley for their stock be permitted to stand, it is demonstrable from the statements furnished by the said Tyler that the company was insolvent on the 10th of April, 1884, when the said Tyler represented it to be in a prosperous condition.

By a statement of its condition, lately furnished by the said Tyler, which is herewith filed, marked (G), as a part of this bill, it appears that he estimates its assets as follows:

11	"Open accounts	$1,088 76
	Machinery account	5,811 46
Stock on hand		1,013 00
M'd'se, sales in Nov. to date		226 30
		$8,139 56"

And its liabilities as follows:

"Am't due for m'd'se, &c.		$1,858 16
Bills payable		2,909 88
		4,768 04
Amount due John Tyler (loan)		5,160 32
		$9,928 36"

Showing the utter insolvency of the company. As Mr. Tyler's statement for the year ending June 1st, 1885, shows only a loss during that year of $3,602.47, and the company ceased active busi-

ness on 1st September following and has been closing out since at not less than cost, and it now appears that the entire capital is gone and the liabilities are near $2,000.00 in excess of the estimated assets, and as it is hardly possible that the loss during the three months between 1st June and 1st September, 1885, could have exceeded $2,000.00, it must be concluded that the company was in very straightened circumstances, if not insolvent, on the 10th April, 1884. This is also shown by the statement of the business during the year ending 1st June, 1885. In that statement the sum of $756.27 is charged for "interest and discount." This repre-
12 sents loans of at least $10,000.00 at ordinary bank rates, and these loans were not used in purchase of materials, as these are accounted for in the separate item of "gross profits" credited on the statement. The $10,000.00 gotten from your oratrix just before the beginning of that fiscal year had been applied to the indebtedness of the company and still this large debt was left unpaid, showing that when your oratrix was induced to take stock there was a debt hanging over the company beyond what was due for materials used in the current business of at least $20,000.00. This was greatly in excess of their capital, which was then nominally only $13,300.00, as Otley had drawn out, but which was in fact only the property on hand, less what was due for materials, which it now appears was much less than the nominal capital.

It thus appears that the letter of John Tyler, president, to your oratrix of the 10th April, 1884, which induced her to subscribe for stock in said company both by its statements and its omissions was false and deceitful and operated as a fraud upon her and will cause her to lose the money so obtained from her unless the proper relief be granted her.

Your oratrix is informed and charges that the mode of settlement for their stock adopted by the said John Tyler and John W. Otley is illegal and fraudulent and should be set aside and they
13 be made to pay for the amount of said stock subscribed for by them in money, with interest from 21st May, 1881. The pretended sale of "good will, formulas, &c.," of the firm of John Tyler & Co. was in fact a purchase by Tyler of himself, and this cannot be allowed when he was using the assets of the corporation in the transaction. The price at which this intangible property was placed was fictitious and fraudulent. It could not be possible that a firm in such a business, having only tangible net assets of $1,513.22 to turn over, could be possessed of good will and formulas in their business worth $8,486.84; and that the valuation was merely fictitious is demonstrated by the fact that now, when the corporation is admitted to be insolvent and its assets are inventoried by the said Tyler, not one dollar is estimated as the value of this good will and these formulas. It is apparent that if they ever had any appreciable value their owners, Tyler & Otley, were more than repaid such value by the large salaries they appropriated to themselves in the chartered company.

Your oratrix further charges that it is well suited that the capital stock of a chartered corporation is a trust fund for the payment of

all the debts of the corporation; she therefore charges that the taking out of the assets of the corporation of $2,500.00 by John W. Otley on account of his stock was illegal and he is a debtor
14 for the said sum, with interest. In fact, the transaction, if valid otherwise, was forbidden by the terms of the charter, as the capital stock was thereby reduced to $13,300, which is less than the minimum capital allowed.

Your oratrix further charges that, by sec. 33 of chapter 57 of the Code of Virginia, it is provided that the directors and stockholders shall be liable to the creditors of a chartered company for any dividend of any part of the capital stock. She therefore claims that any dividend which in whole or in part has been paid out of the capital stock of said company should be returned by the said persons.

Your oratrix further charges that the sum of ten thousand dollars having been unlawfully obtained from her by the misrepresentations of the affairs of the said company by John Tyler, its president and duly authorized agent, and the same having gone into the treasury of and been expended by the said company, the said sum, with interest thereon from the 1st day of June, 1884, is justly due her by the said Tyler and Virginia Oil Company, and she has a right to require all the proper assets of the company to be gotten in and to have them applied to the liquidation of the debts due her and others.

Your oratrix further charges that, by section 26 of chapter 57 of the Code of Virginia, the assignee, as well as the assignor, is made liable for the unpaid subscription for the stock which he holds
15 by assignment, and if there is any part of the subscription due for the stock issued to Joseph D. Evans as aforesaid both the said Evans an- J. F. Crane are debtors to the company therefor.

Your oratrix further charges that the said Virginia Oil Company is insolvent, and that its president, who has been its active manager, is seeking or has secured some other business, and it is necessary that a receiver be appointed for the said company to prevent irreparable loss to those entitled to its assets.

In consideration of the premises, therefore, and as she is without remedy at law, your oratrix prays that the Virginia Oil Company, John Tyler, John W. Otley, C. W. Tanner, Isaac Davenport, Jr., J. H. Montague, C. E. Belvin, Joseph D. Evans, & J. F. Crane be made parties defendant to this bill and be required to answer its allegations and to make full, true, direct, and perfect answer to the several interrogatories hereinafter numbered and set forth—that is to say:

1. What amount of stock has been issued by the Virginia Oil Company, to whom, and when issued?

2. What was the consideration paid for said stock by the several stockholders and when and how has it been paid?

3. What sums have been paid to the said stockholders as dividends and when were they so paid and by what authority?

4. What sums have been paid to the several defendants
16 who claim to have been officers of the company and by what authority?

5. Whether any stockholder has surrendered his stock to the company; and, if so, when and what was paid him for the same?

6. What was the statement made to the stockholders at the end of each fiscal year of the condition of the company and its business by the president and directors or any of them?

7. What meetings of the stockholders have been held and what were their proceedings at such meetings?

8. How was the money paid in by your oratrix for her stock expended by the company?

9. How and when was the capital lost?

Your oratrix further prays that an account of the assets and of the debts of the said company be taken and the said assets be realized as quickly as possible and the funds arising therefrom be paid to the creditors of the company as they may be lawfully entitled, and that the claim of your oratrix to be repaid the money she was induced to pay for the stock issued to her, with interest thereon, be established and be made a debt of the company and payment of the same be decreed to her.

That an injunction be granted restraining the Virginia Oil Company and its officers and agents from further managing or interfering in its affairs, and that a receiver be appointed to take charge of the property and effects of the said company and administer them under the direction of the court.

17 And that general relief be granted and all orders made that the nature of the case may require and to the court may seem meet, and that the usual writ of sp'a be issued, &c.

S. C. SAVAGE,
By Counsel.

STATE OF PENNSYLVANIA, }
City of Philadelphia. }

Sarah Chauncey Savage, being duly sworn, deposeth that she is the complainant in the foregoing bill named, and that she has read the same and knows the contents thereof; that the said bill is true of her own knowledge, except as to those matters which are stated to be on her information and belief, and that as to those she believes them to be true.

SARAH CHAUNCEY SAVAGE.

[NOTARY'S SEAL.] Sworn to before me, a notary public in and for the said city and State, this fourth day of December, 1885.

Given under my hand and seal.

JOS. J. KNOX,
Notary Public, 215 *So. 5th St.*

W. W. HENRY,
Counsel for Comp'l't.

18 The exhibit marked "A," filed with the foregoing bill of complaint, is as follows:

VIRGINIA OIL COMPANY,
RICHMOND, VA., *April* 10th, 1884.

Mrs. S. C. Savage.

MY DEAR MADAM: Your favor of 9th is rec'd. During the short interview I had with you- son I concluded that he could easily undertake the duties that would be required of him in the employ of this company. With regard to the nature of the investment conveyed in the proposition thro' Col. Tanner, I would say that we have no trouble in borrowing all the money necessary for the conduct of the business upon its present basis, but the proposition to you embraced the idea (which we had been considering) of permanently enlarging the scope of our business by increasing our capital stock and getting additional office help. You will readily appreciate the difference to a man'f'g business between borrowing money, which may be called for at the pleasure of the lender, and having the same am't in the shape of a permanent investment, so we concluded that whatever arrangement was made in this direction must be upon a stock basis.

As to the condition of our Co., the capital stock is at present
$18,300, with authority from the stockholders to increase it
19 to $30,000. The last dividend that was declared was a 7% semi-annual. The fiscal year ends on the first of June.

The prospects of our Co. I consider flattering. We have in the past few months decreased our expenses and the outlook for business is better than ever before.

Our products are sold North, South, & West, and the field we are working is so wide that we could without much risk double our business by adding moderately to our capital. Our manufactures pay a large profit and are favorably known throughout the territory we have travelled. As to your chances of selling your stock at par whenever you might wish, I can only say that a gentleman of New York has bought 30 shares at par within the last ten days, but a sale of stock in any m'f'g Co. would depend on its profitableness at the time the sale was made. Should our negotiations result in your son's coming with us, I shall personally try to make his position a pleasant one.

Very resp'y, JOHN TYLER, *Pres't.*

The exhibit marked "B," filed with the foregoing bill of complaint, is as follows, viz:

VIRGINIA OIL COMPANY,
RICHMOND, VA., *Dec. 8th*, 1884.

Mrs. S. C. Savage.

20 DEAR MADAM: Your favor of 5th is rec'd. Our company have tho't it wise—as many other m'f'g Co.'s who have not a large surplus of capital have also—in view of the depression in business which causes payments to come in very slowly, to omit a semi-annual declaration of dividend.

You are mistaken in supposing that the general condition of the finances of the country does not affect our business. It has caused

R. R'ds to be months behind in their payments, as well as slack in their orders, on whom the business is largely dependent, but in spite of this the business of the last six months shows a profit over and above expenses.

You will see, therefore, it is in the interest of all the stockholders that we have prudently determined to avoid weakening our treasury by withdrawing a dividend at this season.

Hoping this explanation will be satisfactory, I remain—

Very resp'y, JOHN TYLER, *Pres't.*

The exhibit marked "C," filed with the foregoing bill of complaint, is in the words and figures following, to wit:

21 *Statement.*

Receipts and disbursements from June 1st, 1884, to June 1st, 1885.

Expenses:		
Gen'l expense ac.	$1,782 60	
Travelling exp.	887 50	
Commissions	189 78	
Salaries	5,075 81	
Wages	2,029 35	
Interest & discount	756 27	
	$10,721 31	
Gross profits		$7,118 84
Net loss		3,602 47
		$10,721 31
Carried to Dr. of profit & loss		$3,602 47

The exhibit marked "D," filed with the foregoing bill of complaint, is as follows, viz:

(Copy.)

RICHMOND, VA., *June 1st*, 1885.

Pres. Annual Report to the Stockholders of the "Va. Oil Co."

22 The business of the company for the past year has been without the profitable result confidently looked forward to in the early part of the year. The first six or seven months, in spite of the growing depression of business, yielded a profit over and above all expenses, but the steadily increasing stagnation of business has caused us to show for the last five or six months a loss, which has been increasing each month, until now it has become a matter of vital importance to devise some means for cutting down expenses.

To this end I make the following suggestion:

As the great falling off in the business has reduced the amount of necessary work in the various departments, the present business can be easily conducted by three persons—one for the office, one for the factory and outside city work, and one traveller (we now have five).

Reducing to this number would save to business $1,280.00 per annum. I, as pres't, am willing to assume the extra duties that would be imposed in the office by such an arrangement and will be willing, if it should be found necessary to have any additional help in the office, to pay for such out of my own salary, as small as that is. I hope my position in this matter may be appreciated by the stockholders, as I am making this proposition in their interest to keep the business going rather than to have to chronicle a failure.

Even with this reduction the business will not pay unless
23 the usual summer trade begins soon and next winter is not such a drag upon us as the last was.

The reasons for the present depression of business are variously stated by business men, but the one that has operated against our railroad trade, I think, is quite apparent; it is, in short, this:

Purchases on the long lines of consolidated railways are now being directed by stockholders, and as controlling interests in all our Virginia railroads are owned by Northern stockholders the purchase of materials has been transferred to the North by their direction. Losing this important and profitable branch of our business has been the main cause of our failure the last half of the year to meet our expenses.

How long this condition of things is to last the wisest of us would find it difficult to determine with any degree of certainty, but good judgment would seem to dictate that it would be better to hold on and run the business at a minimum of expense until times are better.

If my suggestion is adopted by the stockholders we will commence our reduction of expense from the first day of June, that being the first of our fiscal year.

Resp'y submitted.

(Signed) JOHN TYLER, *Pres't.*

The exhibit marked "E," filed with the foregoing bill of complaint, is as follows, viz:

24 RICHMOND, VA., *Aug. 4th*, 1885.

Mrs. S. C. Savage.

MY DEAR MADAM: Your note thro' your son has been rec'd. As you say, my letter accompanying report & statement was partly circular, but, as it involved the position of your son as an employee of the Co., tho't you would be rightly entitled to an expression of opinion and expected one. As stated before, the present business is hardly paying the expense contemplated by the reduction suggested in my report, which embraced the salaries of you- son and my own (in am't $1,280), and it would be the duty of the officers of the Co. in the interest of the stockholders to see that the necessary work was done at the minimum of expense. In order to do my duty and more than my duty I contemplated retaining the services of my son for the benefit of the Co. and paying his salary out of my own, thus giving the Co. the benefit of his services at no cost to it. I expected to do this in the interest of the stockholders, among whom

I have some very warm friends. I am willing, further, to do this: The Co. owes me for borrowed money between five & six thousand dollars; if you will assume this debt I will resign my position as pres't and thus relieve the Co. of the payment of my salary, and the services of your son can be retained. In fact, I am willing to do almost anything in reason to enable the Co. to continue
25 business until this lengthy business depression comes to an end, but it is certain that a material reduction of expense will have to be made in some way or other.

It is very depressing to me, after the years of work I have had in establishing the business of this Co., to see that, in spite of all my efforts, the tide of business sets against us; but I am not of a desponding nature, and still hope that with judicious management in this crisis we maw weather the storm. Hoping to hear from you as soon as possible, I remain,

Very resp'y, JOHN TYLER.

The exhibit marked "(F)," filed with the foregoing bill of complaint, is as follows, to wit:

To the Honorable Beverley R. Wellford, judge of the circuit court of the city of Richmond:

The undersigned respectfully apply to your honor for a charter of incorporation, and, in accordance with law, certify the following facts:

The name of the company is to be the Virginia Oil Company; its principal office is to be at Richmond, Virginia, where its principal business is to be done; its capital stock is to be not less than fifteen thousand dollars and not more than three hundred thousand dollars.

26 The officers for the first year will be John Tyler, president, and the following directors, all residing in the city of Richmond: John W. Otley, Charles W. Tanner, J. Davenport, Jr., John H. Montague, and Charles E. Belvin.

The stock will be divided into shares of the par value of one hundred dollars each, the company to own only so much real estate as may be necessary for the legitimate exercise of its corporate business, which is to be the refining and wholesale and retail dealing in petrolium oils, the manufacture and sale of illuminating and lubricating oils and compounds, including animal, mineral, and vegetable oils, the right of prospecting and boring for oils, and the privilege of buying and selling on commission or otherwise crude petroleum and other materials used either separately or in combination for illuminating and lubricating purposes.

Given under our hands this 20th day of May, 1881.

JOHN TYLER.
C. W. TANNER.
J. H. MONTAGUE.
JOHN W. OTLEY.
J. DAVENPORT, JR.
C. E. BELVIN.

STATE OF VIRGINIA, *City of Richmond,* } *To wit:*

27 I, Aubin L. Boulware, a notary public for the city aforesaid, in the State of Virginia, do certify that John Tyler, John W. Otley, Charles W. Tanner, I. Davenport, Jr., John H. Montague, and Charles E. Belvin, whose names are signed to the foregoing certificate, bearing date May 20th, 1881, have acknowledged the same before me in my said city.

Given under my hand this 21st day of May, A. D. 1881.

A. L. BOULWARE,
Notary Public.

VIRGINIA:

In the Circuit Court of the City of Richmond, May 21st, 1881.

It appearing to the court that John Tyler, John W. Otley, Charles W. Tanner, I. Davenport, Jr., John H. Montague, and Charles E. Belvin have made, signed, and acknowledged, according to law, a certificate in writing having for its object the formation of a joint-stock company for the purposes set forth in said certificate, the court doth grant unto the said John Tyler, John W. Otley, Charles W. Tanner, I. Davenport, Jr., John H. Montague, and Charles E. Belvin, and such others as may be hereafter associated with them, a charter upon the terms set forth in said certificate; and it is ordered that they and their associates be, and are hereby, made and cre-
28 ated a body corporate and politic by the name of "The Virginia Oil Company," with all the powers and privileges conferred and subject to all the provisions and restrictions imposed by the laws of Virginia applicable to corporations of this character; and it is ordered that the same be recorded.

Teste: ALFRED SHIELD, *Clerk.*

Charter granted as asked.

B. R. W., JR.

MAY 21, '81.

1881, May 21.—Recorded in Charter Book No. 1, page 304.

A. SHIELD, *Clerk.*

COMMONWEALTH OF VIRGINIA:

Office of secretary of Commonwealth.

RICHMOND, *May* 23*d*, 1881.

Charter lodged and recorded in Book No. 4, page 93.

Certified a true copy.

H. W. FLOURNOY,
Sec't'y Commonwealth.

Nov. 27, 1885.

The exhibit marked (G), filed with the foregoing bill of complaint, is as follows, to wit:

29 EXHIBIT "G" FILED WITH BILL.

20 bbls.	15 C. T. oil, 1,000 gals.	@	9c.		90	
5 "	Gold Fts. grease, 2,000 lbs.	@	2		49	
1 "	Golden Eng. oil from Ga., 50 gals.	@	20		10	
1 "	cylinder " " " 50 "	@	30		15	
8 "	residuum, 450 "	@	5		22	50
1 "	pulp, 50 "	@	30		15	
1 "	signal oil, 50 "	@	30		15	
3 half bbls.	cyl. " 75 "	@	30		22	50
18 bbls.	Maltese grease, 7,200 lbs.	@	2½		162	
1 "	Nat. W. Va. oil, 50 gals.	@	10		5	
1 "	Foot's " 50 "	@	8		4	
4 "	palm grease, 1,600 lbs.	@	1½		24	
200 boxes	soap	@	2 00		400	
3 bbls.	cyl. oil, 150 gals.	@	30		45	00
4 "	White Oak Eng. oil, 200 "	@	12		24	
1 "	Summer " 50 "	@	8		4	
5 "	Golden Eng. " 250 "	@	20		50	00
20 gals.	sperm "	@	1		20	
5 bbls.	rosin, Foot's, 250 gals.	@	8		20	00
1,000	small paper scoop boxes	@	1		10	
150 "	button-wood "	@	10		15	00
					$1,013	00

30	Open acc'ts	1,088	76
	Machinery acc't	5,811	46
Stock on hand		1,013	00
Mdse. sales in Nov. to date		226	34
		$8,139	56
Am't due for mdse., &c.			1,858 16
Bills payable			2,909 88
			4,768 04
Am't due Jno. Tyler (loan)			5,160 32
			$9,928 36

And on the same day, to wit, at a circuit court of the United States for the eastern district of Virginia, held at Richmond, in said district, on the 11th day of Dec'r, 1885.

S. C. SAVAGE, for, &c., }
vs.
THE VA. OIL CO., &c. }

On the reading of the plaintiff's bill praying for a receiver in this case the court doth order that the defendant, The Virginia Oil Company, do show cause before one of the judges of this court, at

Richmond, on Saturday, the 19th December, 1885, if any it can, why the court should not appoint a receiver of the assets of the said company according to the prayer of the bills, service of this order having been first made on the Virginia Oil Company five days before the hearing.

31 (Signed) RO. W. HUGHES, *Judge.*

The foregoing order bears the following endorsement:

Served this 14th December, 1885, by delivering a copy to me—
JOHN TYLER,
Pres't Va. Oil Co.

And at another day, to wit, on the 19th day of December, A. D. 1885, came the complainant in this cause and sued out of the clerk's office of the circuit court of the United States for the district aforesaid a subpœna in chancery, which, together with the several returns thereon, is as follows, to wit:

UNITED STATES OF AMERICA, *Eastern District of Virginia,* } *ss:*

The President of the United States of America to The Virginia Oil Company, John Tyler, president of said company and in his own right; John W. Otley, C. W. Tanner, Isaac Davenport, Jr., J. H. Montague, and C. E. Belvin, citizens of the State of Virginia, and Joseph D. Evans and J. F. Crane, citizens of the State of New York, Greeting:

We command you and every one of you that you appear before our judges of our circuit court of the United States of America
32 for the eastern district of Virginia, at the court-room, in the custom-house, in the city of Richmond, in said district, on the first Monday in the month of February next, to answer the bill of complaint of Sarah C. Savage, a citizen of the State of Pennsylvania, this day filed in the clerk's office of said court, in said city of Richmond, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the eastern district of Virginia to execute.

Seal United States Circuit Court, Eastern District of Virginia.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Richmond aforesaid, this 19th day of December, A. D. 1885, and of our Independence the 110th.

M. F. PLEASANTS, *Clerk.*

MEMORANDUM.—The above-named defendants are notified that unless they enter their appearance in the clerk's office of said court, at Richmond aforesaid, on or before the day to which the above writ is returnable the complaint will be taken against them as confessed and a decree entered accordingly.

M. F. PLEASANTS, *Clerk.*

33 *Marshal's Returns.*

Executed this 23 and 24 days of December, 1885, by delivering to all, except Joseph D. Evans & J. F. Crane—not found, being non-residents—the within-named defendants, in person, a true copy of this writ.

JNO. H. OVERBERG,
Special Deputy Marshal.

Not Served.

I hereby certify that, after diligent search, I am unable to find the within-named Joseph D. Evans and J. F. Crane in my district. Dated January 26th, 1886.

M. T. McMAHON,
U. S. Marshal, Southern Dist. N. Y.,
By GEORGE H. HOLMES, *Deputy.*

And at another day, to wit, at a circuit court of the United States for said district held at Richmond aforesaid on the 19th day of December, A. D. 1885, the following order was entered:

S. C. SAVAGE, for, &c., }
vs.
THE VA. OIL CO., &c. }

On the return of the order to show cause, made in this case on 11th December, 1885, which has been duly executed on John
34 Tyler, the president of the defendant The Virginia Oil Company, and no one appearing to show cause why a receiver of the said company should not be appointed as prayed for in the bill, and the court being satisfied that the bill presents a proper case for a receiver, the court doth adjudge, order, and decree that W. W. Henry, Jr., who is hereby appointed receiver of the assets of the Virginia Oil Company, do take possession of all the books, accounts, and other property of the said company, and do proceed to collect the debts due the said company, and to sell, either publicly or privately, as to him may seem best, the property of said company, for cash, or on such terms as may be directed by the court, in case he deem a sale of any part on credit advisable, and deposit the money he may receive, less his expenses, in the Merchants' National Bank of Richmond, subject to the order of this court in this case, and report his proceedings from time to time to the court; and in order to enable the said receiver to execute this order the Virginia Oil Company and its officers shall deliver its books, accounts, and other property to the said receiver.

But before the said W. W. Henry, Jr., shall be at liberty to act under this order he shall enter into bond before the clerk of this court, with security, to be approved by the said clerk, in the penalty of $5,000, payable to the United States, and conditioned to
35 faithfully perform the duties of receiver in this case.

RO. W. HUGHES.

And on the same day, to wit, at a circuit court of the United States for said district held at Richmond aforesaid on the 19th day of December, 1885, the following order was entered:

S. C. SAVAGE, for, &c.,
vs.
THE VA. OIL CO., &c.

On motion of the plaintiff, and it appearing to the court that the defendants Joseph D. Evans and J. F. Crane are non-residents of this district, the court doth order that the said defendants, Joseph D. Evans and J. F. Crane, do appear, plead, answer, or demur to the plaintiff's bill, filed this day, by the first Monday of February, 1886, at the office of the clerk of this court at Richmond, Virginia, and this order shall be served on the said defendants, if practicable, wherever found.

RO. W. HUGHES, *Judge.*

And on the same day, to wit, on the 19th day of December, 1885, in obedience to the above order, came W. W. Henry, Jr., this day appointed receiver in this cause, and filed in the clerk's office
36 of said circuit court of the United States his bond, with security, as required by said order.

Said bond is as follows, viz:

Know all men by these presents that we, W. W. Henry, Jr., and W. W. Henry, of the city of Richmond, Va., are held and firmly bound unto the United States in the sum of five thousand dollars; for the payment whereof we bind ourselves, jointly and severally, our heirs, &c., firmly by these presents.

Witness the following signatures and seals the 19th December, 1885.

The condition of the above obligation is such that whereas the said W. W. Henry, Jr., has been appointed by the circuit court of the United States for the eastern district of Virginia receiver of the assets of the Virginia Oil Company, in the suit of Sarah Chauncey Savage, for, &c., *vs.* Virginia Oil Company, &c., therein pending, by a decree of this date, now, if the said W. W. Henry, Jr., shall faithfully perform the duties of receiver in the said case, then this obligation to be void, else to be in full force and effect.

W. W. HENRY, JR. [SEAL.]
W. W. HENRY. [SEAL.]

Acknowledged before me this 19th December, 1885.

M. F. PLEASANTS,
Clerk U. S. Circuit Court, East. Dist. of Virginia.

37 And at another day, to wit, at rules held in the clerk's office of said circuit court of the United States on the first Monday of February, A. D. 1886, came John W. Otley, one of the defendants in this cause, and filed in said clerk's office his answer to the bill of complaint herein. Said answer, together with the exhibits filed therewith, is as follows, viz.:

Answer of Defendant Otley.

The separate answer of John W. Otley to a bill of complaint exhibited against him and others in the circuit court of the United States for the eastern district of Virginia by Sarah Chauncey Savage.

This respondent, reserving to himself all benefit of exception to said bill for its many imperfections and errors, for answer to said bill, or to so much thereof as he is advised it is material he should answer, says that he is ignorant of the negotiations between complainant and his codefendant, John Tyler, president of the Virginia Oil Company, and of all the statements and representations alleged to have been made by him, which are detailed at length in the first four pages of said bill; he was utterly ignorant of them until the filing of said bill, being informed for the first time by there reading them. He was also and is utterly unconcerned in and irresponsible for any such statements and representations, whether they were in fact true or not, and without interest in such negotiations, as he will hereinafter clearly show.

38 Respondent, further answering, says that it is true that some time prior to 1881 he with said John Tyler conducted in Richmond, under the style and firm name of John Tyler & Company, a business in oils, railroad grease, &c., and that in May of that year they with certain others did obtain a charter as alleged in said bill. The object of said company is correctly stated in said bill. This charter was obtained, the company incorporated, mainly in the interest of Mr. C. W. Tanner, and at the request of his father, Col. Wm. E. Tanner, who was to supply the capital for his said son. Respondent was not desirous of the charge; his firm's business and prospects were good, and he was satisfied with matters as they were, but he yielded to the request of Col. Tanner, who was a relation of his and a friend of Mr. Tyler, and who desired thus to provide for his son. The issue of stock May 21st, 1881, is correctly stated in said bill, as is also approximately the mode of payment therefor by John Tyler and respondent. The good will, fixtures, and formulas of John Tyler & Co. were then worth the full sum of $8,486.84, the price at which they were estimated. This is shown by the condition of the business of John Tyler & Co. before the formation of this company and by the condition and profits of the company, for the first year after its formation. The original input of capital in the business was $1,553.08, furnished by Tyler. In the fourteen months that the business was run by Tyler & Co. the return from said

39 input, with the formulas and good will of Tyler & Co., was $2,800; in salaries to Tyler and respondent, $2,450.51; amount of inventory turned over to the company, mdse., balances and cash, $314.05, and machinery and fixtures $395.75, making an aggregate of $5,900.31; deducting the capital put in, a balance was left of $4,253.16 net profits, which is equal to a dividend of $36\frac{6}{11}$ per cent. on $11,647.15, the amount at about which said inventory, merchandise, balances and cash, machinery and fixtures and good will and

formulas were valued at the time of the formation of said company, and which said value was paid Tyler and respondent in stock of said company. The value fixed on said property of Tyler & Co. was arrived at in the following manner: It has been stated that Col. Wm. E. Tanner suggested the formation of the company, and proposed to put in it his son, C. W. Tanner, supplying him with the needed capital. With that view, and in order to find what amount of capital he should furnish, he examined carefully the business of said Tyler & Co., its condition and assets, estimated their value, and himself suggested the basis of settlement between said Tyler and Otley and C. W. Tanner, and proposed the sum of $5,000 as a proper input by C. W. Tanner against the net value of the interest of said Tyler and respondent in said business; thus before the company was formed Col. Tanner, a competent business man, upon a
40 personal examination into the business, assets, and affairs of said Tyler & Co., with his interest to make them as small as he could—for the smaller the value of Tyler & Co.'s business, the less would be the proper input by him to equalize the interest of Tyler, Otley, and C. W. Tanner—estimated the said business and assets at the values adopted in the formation of the company, and on which, as a basis, said stock was issued.

Respondent, further answering, says that it is not true as alleged in said bill that the officers of the company received salaries to June 1st, 1882, of $1,500.00 per annum; it is true that they received salaries to that period of $1,200.00 each. The business of the company up to that period had realized the net profit of about 26 per cent. per annum on the capital invested, after the payment of said salaries and all expenses of said business. This is shown from a statement here filed, marked "Exhibit A," which was taken from the books of said company and may be verified by them unless they have been altered. Respondent submits that with such a business the said salaries were reasonable and proper, and that the dividend of 20 per cent. declared was earned and properly declared.

Respondent, further answering, says that it is not true "that on the 3d day of April, 1884, the stock of said John W. Otley was surrendered to the company" or that it was so surrendered on any day. The said stock was, on the — day of October, 1883, sold by said
41 Otley to John Tyler individually for the sum of $2,500.00, and at that time and from that time forth his services as superintendent of the company and all connection with said company on his part ceased, and he had no more knowledge of or interest therein. Said sale was brought about in the following manner: There was disagreement between respondent and Tyler and Tanner as to the management of the affairs of said company. He did not think the business could be run by the methods approved by Tyler and Tanner; he therefore deemed a dissolution of their connection desirable, and Mr. Tyler concurred in this view. Mr. Tyler therefore offered to buy or sell at 50 cents, but if respondent should buy his, Tyler's, stock, Tyler required that he should also buy that of Mr. Jos. D. Evans—the uncle of Mr. Tyler—at par. Respondent was not desirous to sell at fifty cents, and would have preferred to

have bought that of Mr. Tyler and Mr. Evans at that figure, and could easily have done so, but he was not willing at that time to give par for the stock of Mr. Evans. He therefore thought it necessary to sell, as he did, to Mr. Tyler at the said price of $2,500.00. Respondent had no thought of selling or surrendering said stock to said company. He knew, further, that no authority had been given by the company to purchase or receive surrender of the same. Up to that time he was cognizant of the proceedings of the board of directors, and he knew that no such authority existed, and that such purchase or surrender had never been contemplated by
42 said company. The offer to buy or sell was from Mr. Tyler, and in payment of said purchase price he received Mr. Tyler's individual check.

Respondent therefore avers that the price paid by him and Tyler for the stock issued them May 31st, 1881, was full, the property surrendered to the company being fully equal in value to the par value of said stock; that the said dividends declared June 1st, 1882, were justified, and more than justified, by the earnings of said company; that on Oct. —, 1883, he sold his stock to John Tyler, not to said company, for the sum of $2,500.00, and that it was at that time fully worth that price, and he was more desirous of buying than selling at that figure; that all of these transactions were in perfect good faith, certainly as far as he was concerned, and, as he believes, on the part of all parties; that he has had no knowledge of the affairs of said company since his withdrawal on Oct. —, 1883; that at that time said company was perfectly solvent and unembarrassed, and that all embarrassments and insolvency, if any, as to which respondent knows nothing, has arisen since that period, and from managements and events over which he had no control and for which he is in nowise responsible.

Respondent therefore denies "that the mode of settlement for their stock adopted by said John Tyler and John W. Otley is illegal and fraudulent and should be set aside and they made to pay for the amount of said stock subscribed for by them in money,
43 with interest from 21st May, 1881. On the contrary, he avers that full price in property was paid, as is above shown, and there is no law for or sense in requiring such payment in money, or that would require such a settlement to be set aside and declared void. Respondent denies that the purchase of the property of John Tyler & Co. by the said company was a purchase by Tyler of himself. No principle is clearer than that a corporation and its members are distinct and separate bodies, and that sales may be had between such corporate and natural persons. Respondent denies that the price at which said property was placed was fictitious and fraudulent. The contrary has been clearly shown above. That Mr. Tyler, in his recent statement of the affairs of the company, does not estimate the good will and formulas at any value is no evidence that they are of no value. Tho' the company is insolvent *a fortiori*, it is no evidence that the good will and formulas of John Tyler & Co. were of no value.

Respondent has already denied that he took out of the assets of the company the sum of $2,500, the price paid him by Mr. Tyler for

his stock. He denies further that there was any legal prohibition of such sale by him.

Respondent believes that he has now answered all the material allegations of said bill, so far as they affect him, and he proceeds now to answer the several interrogatories propounded to him with the other defendants as fully as his knowledge of them will permit.

44 To the first interrogatory he answers that the amount of stock of said company issued before October —, 1883, after which time his knowledge of its affairs ceased, is correctly stated in the bill as follows, viz., to John Tyler 50 shares, to John W. Otley 50 shares, to C. W. Tanner 50 shares, to Isaac Davenport, Jr., 1 share, to C. E. Belvin 1 share, and to J. H. Montague 1 share, all issued May 31st, 1881, and 30 shares to Joseph D. Evans, Nov. 12th, 1881.

To the second interrogatory he answers that the consideration paid for said stock by Tyler and respondent was the property of John Tyler & Co., put by them into the company at its organization, May 31st, 1881. C. W. Tanner paid $5,000 in cash for his stock at the same time, and Isaac Davenport, Jr., C. E. Belvin, and J. H. Montague $100 each for theirs; Mr. Joseph D. Evans bought his stock of the company Nov. 12th, 1881, and paid $3,000 for it; and as to the purchase by Crane he is not informed, it having occurred after his connection with the company ceased.

To the third interrogatory he answers: The only dividends paid by the company, so far as he is informed and believes, were June 1st, 1882, 7 per cent. to Jos. D. Evans and 20 per cent. to the other stockholders, and they were paid by authority of the board of directors of said company.

To the fourth interrogatory he answers: The sum of $1,200 45 per annum was paid the officers of the company for the first year. After that year their salaries were increased to $1,600, both by authority of the board of directors, and this continued until Oct. 14th, 1883, but whether afterwards or not respondent is not informed.

To the fifth interrogatory he answers: No one has, to his knowledge, surrendered his stock to the company.

To the sixth interrogatory he answers: The statement made to the stockholders June 1st, 1882, is summarized in Exhibit A filed with this answer. A statement was made June 1st, 1883, respondent believes *believes*, but he has no memory of it and cannot state it. He here files, marked Exhibit B, a statement, dated January 1st, 1883, made by an expert book-keeper and showing the condition of the company at that time.

To the seventh interrogatory he answers: Many meetings of the stockholders were held during his connection with the company and are shown in the book of minutes kept by the secretary, but respondent is unable to say.

To the eighth and ninth interrogatories he answers: He does not know.

And respondent, having fully answered, prays to be hence dismissed, with his costs.

JOHN W. OTLEY.

STATE OF VIRGINIA, *City of Richmond*, } *ss:*

46 This day, before me, the undersigned, a notary public in & for said city, in said State, personally came John W. Otley, whose name is signed to the foregoing answer, and made oath that the statements therein made as of his own knowledge are true and those made on the information of others he believes to be true.

Given under my hand this 1st day of February, 1886.

F. H. McGUIRE, *N. P.*

"EXHIBIT A" FILED WITH ANSWER OF J. W. OTLEY.

Statement earnings of Virginia Oil Co., year ending May 31st, 1882, viz:

Purchases	$24,006 57	
General expense	1,904 50	
Interest & disc.	47 43	
Wages	1,688 32	
Travelling expenses	1,398 53	
Commissions	41 55	
Salaries to officers	3,729 99	
Loss by fire on steamer	361 00	
Bills payable	4,842 18	
	$38,020 07	
Sales		$36,302 83
Mdse. on hand, at net cost		5,947
		42,249 83
Net balance	$4,229 76	
	$42,249 83	$42,249 83

Jan. 1st. *Balance-Sheet Virginia Oil Co.* 1883.

Ledger balance.

						Resources.	*Liabilities.*		*Resources.*	*Liabilities.*
Mdse., sales		68,183 71	Mdse		13,685 79	Stock	18,300 00	Stock		18,300 00
" purchases	52,660 97		Cash	302 19		302 19		Cash 302 19		
Inventory		7,235 92	Sundries, personal acc'ts	7,126 64		7,126 64		Loan of 1,553 08	1,855 27	
Salaries	7,291 26		" cr. "		5,204 22		5,204 22	Paid by this company.		
Wages	3,152 86		" corrections (cash, fr'ts, &c.)	94 75				Sundries, personal acc'ts owing the firm	7,126 64	
Commis-ions	71 91		Bills payable		3,065 44		3,065 44	Acc'ts that firm owes		5,204 22
Interest & discount	106 84		General expenses	2,921 22				Sundries, charges and corrections in ledger		35 46
Gen. expense-	2,921 22		Traveling "	2,063 58				Bills payable		3,065 44
Travelling ex's	2,063 58		Salaries	7,081 24				" " note of O. E. Lomax		900 00
Profit & loss	361 00		" omissions to Lomax	210 02				Machinery	2,686 58	
Balance	6,789 99		Wages	3,152 86				Inventory	7,235 92	
	75,419 63	75,419 63	Machinery	342 57		2,686 58		Dividends	3,270 00	
	Gain	6,789 99	Interest & discount	108 84				Stock premium.		
Dividends		3,270 00	Commissions	71 91				Less amount of note paid to John Tyler	5,330 71	
Net proceeds		3,519 99	Profit & loss	361 00						
Call loan of		1,553 08	Mdse. sales omitted		1,894 37	Sundries.	35 46			
				23,849 82	23,849 82					
John Tyler, as part capital and placed to his cr. Jan. 1st, 1881		5,073 07				Inventory	7,235 92			
						Dividends	3,270 00			
						Stock premium	6,883 79			
							27,505 12	27,505 12	27,505 12	27,505 12

49 And at the same day, to wit, at rules held in the clerk's office of the circuit court of the United States for the eastern district of Virginia, on the first Monday in February, 1886, came the defendants The Virginia Oil Company, by John Tyler, president; John Tyler, in his own right, and Isaac Davenport, Jr., and entered their appearance in this cause.

The other defendants not appearing, it is ordered that unless they appear and plead, answer, or demur at the next rules the bill will be taken against them as confessed and a decree entered accordingly.

And at another day, to wit, at rules held in the clerk's office of the circuit court of the United States for the district aforesaid, on the first Monday of March, 1886—

The defendants The Virginia Oil Company and Isaac Davenport, Jr., having failed to answer, plead, or demur at these rules, it is ordered that unless they appear and plead, answer, or demur at the next rules the bill will be taken against them as confessed.

The defendants C. W. Tanner, John H. Montague, and C. E. Belvin not having complied with the order entered in this cause at February rules, it is ordered that the bill be taken against them as confessed.

This day came the defendant John Tyler and filed in said clerk's office his answer to the foregoing bill of complaint; which answer is as follows, to wit:

50 *Answer of John Tyler.*

The answer of John Tyler to a bill of complaint filed against himself and others by Sarah C. Savage in the circuit court of the United States for the eastern district of Virginia.

This respondent, in answer to said bill or so much thereof as he is advised it is material for him to answer, says that it is true as alleged in said bill that the complainant did, through Col. William E. Tanner, open communications with this respondent as president of the Virginia Oil Company and did propose that if her son, H. C. Savage, could procure a position in said company that she would loan said company, upon good security, the sum of ten thousand dollars, and that the proposition was declined, but an offer was made to employ her said son if she would take that amount of the company's stock at par, which she did, and her son was so employed and made a thorough examination of the business of said company and of its books and papers, and during his connection with the business, which continued until its close, he did know or could have known every fact and circumstance connected therewith, and this respondent believes that he not only did know himself, but kept his mother advised of the condition of its affairs. This respondent did write the letter filed as Exhibit "A" with the bill, and now avers that every-
51 thing stated therein as facts were then true. It is true that this respondent wrote the letter filed as Exhibit "B" with the bill and also the letter filed as Exhibit "C" and also the circu-

lar filed as Exhibit "D" with the bill, the statements of which were true and made in good faith, which this respondent also avers as to the letter written by him and filed with the bill as Exhibit "E" with the bill.

It is true that this respondent did inform the complainant after he had sent her the said circular, Exhibit "E," that he believed the company could pay its debts, and he believes that had it not been for the interference caused by the filing of the complainant's bill that the assets of the company could have been so managed as to pay the debts. This respondent denies that he has made any misrepresentations to the complainant that she may have been and actually was deceived in her anticipations of profits is true. This respondent was himself greatly disappointed in the results of the business, and is a far greater loser than the complainant by the disastrous results that were reached. After working for years at a merely nominal salary in order to build up a business from which he hoped and believed large profits would be ultimately derived he finds himself out of pocket not only to the amount of his original stock but a creditor of the company for a large amount.

It is true that for some time previous to 1881 this respondent and John W. Otley, under the firm name of John Tyler & Co.,
52 conducted in the city of Richmond a business in oils, railroad grease, &c., and that in the spring of that year did get up the Virginia Oil Company, as stated in the bill; that the incorporators were those named in the bill, and the stock was placed as stated in the bill. The whole plan of the company was written out by Col. W. E. Tanner, after a careful and thorough examination of the whole matter, and he paid five thousand dollars into the company in actual cash and took five thousand dollars of the company's stock, at par, for his son, C. W. Tanner. I. Davenport, Jr., J. H. Montague, and C. E. Belvin paid in actual cash one hundred dollars and took each one share at par.

The good will and property in the business of John Tyler & Co. was valued by the other stockholders and Col. W. E. Tanner at ten thousand dollars, and stock of the par value of five thousand dollars was issued to this respondent and a like amount to John W. Otley; that on the 12th of November, 1881, Joseph D. Evans paid in cash the par value of thirty shares, which were issued to him. The salaries paid to this respondent, as president, J. W. Otley, as superintendent, and C. W. Tanner, secretary and treasurer, were, for the first year after the organization, $100 per month to each, and afterwards $1,500 per annum.

It is true that on June 1st, 1882, a dividend of twenty per cent. was declared and paid to all of the stockholders except Joseph
53 D. Evans, and seven per cent. was paid him, because that was deemed his fair proportion of the earnings made after he became a stockholder. The profits actually made for the six months beginning June 1st, 1881, were thirteen per cent. of the capital stock, and for the six months ending June 1st, 1882, only seven per cent. It is true that no dividends have been since paid, and that the company is now insolvent.

It is true that on April 3d, 1884, the company, through this respondent, bought of John W. Otley his $5,000 of stock for $2,500, thereby stopping his salary of $1,500 per annum from that time to the close of business, late in 1885, amounting to as much as the sum paid him and reducing the liability on account of capital stock $5,000. This stock has been kept in the treasury of the company with a view to its reissue whenever the business of the company was such as to give it par value. This respondent avers that when said company was organized and for some months afterwards there was great activity in the business of railroads, machine shops, and manufacturing establishments, the large consumers of the product of the Virginia Oil Company; that orders were coming in freely, the sales were large, and the profits considerable; then came a depression in all business of this character, causing a less consumption and greater economy in buying and the substitution of cheaper lubricating material; that depression, instead of proving temporary,
as was hoped and believed by this respondent, continued and
54 intensified up to the close of the company's business.

It is not true, as argued in the bill, that the company was insolvent when the complainant paid for her stock or that it owed at least $20,000. Only a part of her input went to the payment of debts, and the debts so paid out of it were notes in bank discounted at eight per cent.; the rest of her input went for the purchase of material and current expenses.

In response to the interrogatories in said bill this respondent answers to the first interrogatory: The amount of stock of the Virginia Oil Company is as stated in the bill and as appears by the stock books of the company in the receiver's hands.

To the second he says that every stockholder paid in cash at par for his or her stock except John W. Otley and this respondent. The dates of payment were the dates of subscription and appear from the books. This respondent does not remember the exact dates.

To the third he says that the dividends paid to stockholders are stated correctly in the bill.

To the fourth he says that $1,200 per annum was by authority of the board of directors paid to John W. Otley, C. W. Tanner, and this respondent for the first year, and $1,500 by like authority after that time, except that payment of salary to John W. Otley ceased upon the purchase of his stock.

To the fifth he answers that no stock of the company was
55 surrendered to it except that of Otley, the particulars of which
have been hereinbefore stated. This purchase was authorized by the board of directors.

To the sixth he answers that the statements made to the stockholders were in accordance with the facts as shown by the books. Trial-balance sheets were regularly made out and their results were reported.

To the seventh he answers that meetings of stockholders were regularly held in accordance with law, and minutes regularly kept of their proceedings. The minute book is in the hands of the receiver.

To the eighth he answers that of the money paid in by the complainant $5,000 went to meet bills payable, and the residue as shown by the books and hereinbefore mentioned.

To the ninth he answers that it would be impossible to say except by a careful examination of the books, which are in the receiver's hands; but this he can aver: that it was lost in legitimate efforts to keep up and advance the interests of the stockholders.

And now, having fully answered, this respondent prays to be hence dismissed with his costs.

JOHN TYLER.

STATE OF VIRGINIA, *City of Richmond,* } *To wit:*

I, Charles U. Williams, a notary public for the city aforesaid, in the State of Virginia, do hereby certify that John Tyler, whose name is signed to the foregoing answer, this day made oath before
56 me, in my said city, that the statements made in said answer as of his own knowledge are true, and such as are made upon information derived from others he believes them true.

Given under my hand this 1st day of March, 1886.

CHAS. U. WILLIAMS,
Notary Public.

To the foregoing answers of John W. Otley and John Tyler the complainant replies generally.

And at another day, to wit, at rules held in the clerk's office of the said circuit court of the United States on the first Monday of April, 1886, the defendants The Virginia Oil Company and Isaac Davenport, Jr., not having complied with the order entered in this cause at March rules, 1886, it is ordered that the bill be taken against them for confessed.

And on another day, to wit, on the 15th day of April, 1886, came W. W. Henry, Jr., heretofore appointed receiver in this cause, and filed in the clerk's office of said circuit court of the United States for the eastern district of Virginia his report as such receiver.

Said report is in the words and figures following, to wit:

57 *Receiver's Report.*

RICHMOND, *April 15th*, 1886.

To the Hon. R. W. Hughes, judge of the United States district court for the eastern district of Virginia:

The undersigned, receiver of the Virginia Oil Company, appointed under decree of December — 1885, would hereby respectfully tender his resignation, accompanied by the following report:

Your receiver would report that on the 22d of Jan., 1886, he offered for sale at public auction, after having first advertized the same in the "State" newspaper, published in the city of Richmond, and in the "Baltimore News," published in the city of Baltimore, all of the machinery and stock of the Virginia Oil Company, but that at the time appointed, when the property was offered, he did not

get a single bid; that both previous to that time and since he has offered the machinery for sale as a whole, and has made every effort to effect a sale of the same, but so far without success. Your receiver has disposed of the remnant stock of soap and oils; he has made also many efforts to collect the outstanding open accounts due the company, but finds that they were almost all uncollectible. He has had printed and sent out to all the creditors a request to settle at once, and has had some accounts put in hands of a collector.

58 Your receiver herewith appends a statement, marked "A," accompanied by vouchers of all receipts and expenditures, and would ask that a reasonable allowance be made him for his services, and that he be relieved from his receivership, as his absence from the city will render it impossible for him to give his further attention to it.

Respectfully submitted, W. W. HENRY, JR.,
Receiver of Va. Oil Co.

The statement "A" referred to in the foregoing report and filed therewith is as follows:

W. W. Henry, Jr., receiver, in ac. Virginia Oil Company.

1886.				
Jan. 2.	To cash			1 07
" 7.	" postal order			14 00
" 16.	" load old junk			6 00
M'ch 8.	" discount notes of W. B. Husman & Co.			32 28
Ap'l 14.	" sale of remnant of oils			40 35
Jan. 19.	" " " 1,500 lbs. soap, @ 2¾			41 25
M'ch 6.	" col'n open ac. J. H. Tyler & Co.			4 00
" "	" " " J. D. Carrington			1 40
	Collected thro' Cole & Palmore—			
	E. Ferguson & Co.	4 80		
	Tredegar Co.	3 75		
	Frank Coates	6 90		
	L. F. Mason	2 75		
	Donnan, Cannon & Co.	1 50		
		19 70		
	Less — % com's	4 75		
			14 95	
			155 30	

59

Feb. 2.	By ad. in State		21 00
" " "	" " Balt. News		1 50
" 5.	" stationary & postage		2 00
" 10.	" printing circulars		1 50
" 12.	" wages Edgar Strother, cutting & boxing soap, &c.		15 00
	" Selden & Faylor on ac. rent		114 30
			155 30

And at another day, to wit, at a circuit court of the United States for the eastern district of Virginia held at Richmond, in said district, on the 14th day of May, A. D. 1886, the following order was entered, viz:

S. C. SAVAGE, for &c.
vs.
THE VA. OIL COMPANY & *als.*

This cause came on to be heard at this time and was argued by counsel.

And thereupon and upon consideration thereof, it appearing that Joseph D. Evans and J. F. Crane, citizens of New York, named as defendants in the bill, have not been served with process, and that it is not necessary for the determination of the rights of the plaintiff asserted against the other parties that the said Evans and Crane be made parties to the cause, it is ordered that this suit be proceeded in without making the said Evans and Crane parties thereto
60 and without prejudice to their rights.

And it appearing by the report of W. W. Henry, Jr., dated and filed 15th April, 1886, that he desires to resign the position of receiver in this case, to which he was appointed by the order of 19th December, 1885, and the said report showing that he has paid out all the money which came to his hands as such receiver, the court doth confirm the said report, to which there is no exception, and doth accept the said resignation and discharge the said W. W. Henry, Jr., from all further duty and liability as such receiver, and doth appoint in his stead James Lyons, as receiver of the assets of the Virginia Oil Company, to take possession of all the books, accounts, and other property of the said company, and to proceed to collect the debts due said company, and to sell, either publicly or privately, as to him may seem best, the property of the said company for cash or on such terms as he may deem best in case he deem a sale of any part on credit advisable, and deposit the moneys he may receive, less his expenses, in the Merchants' National Bank of Richmond to the order of this court in this case, and report his proceedings from time to time to the court; and the said James Lyons is directed out of any money which may come to his hands as such receiver to pay to W. W. Henry, Jr., or to his attorney $50.00 in full compensation for his services as receiver in this case; but before the said James Lyons shall be at liberty to act under this
61 order he shall enter into a bond before the clerk of this court, with security to be approved by the said clerk, in the penalty of $1,500.00, payable to the United States, and conditioned to faithfully perform the duties of receiver in this case.

And the court doth further adjudge, order, and decree that M. F. Pleasants, one of the masters of the court, do inquire and report to the court:

1. What amount of capital stock has been issued by the defendants The Virginia Oil Company, to whom and when issued.
2. What was the consideration paid by each holder for the stock

issued to him, and when and how paid, and whether full consideration was paid therefor.

3. What sums have been paid to the several stockholders as dividends, and when, and by what authority were the payments made; and, if by order of the board of directors or of the stockholders, whether the orders were made at lawful meetings at which there was present a proper quorum.

4. What was the true condition of the company when such dividends were declared, and whether they were paid out of profits earned or out of capital or money borrowed.

5. Whether any stockholder has surrendered his stock or any part of it to the company; and, if so, when and what was paid him therefor; and what was the condition of the company at the time as to solvency, and whether the said purchase of stock by the
62 company reduced its capital to less than the minimum allowed by the charter.

6. What sums have been paid to the several defendants, or any of them, who have acted as officers of the company, and by what authority; and if by orders of the directors or stockholders, whether at lawfully constituted meetings.

7. An account of the assets and liabilities of the Virginia Oil Company, showing any priorities which exist among the said liabilities.

8. A correct statement of the condition of the affairs of the company on or about 1st June, 1884, when the plaintiff was induced to subscribe for stock therein, showing whether the said company was solvent and in a prosperous condition as represented in the letter of John Tyler to the plaintiff, dated 10 April, 1884, and filed as Exhibit "A" with the bill.

9. Any other matter deemed pertinent by the master or required by either party.

And the said master is authorized to examine witnesses and reduce their testimony to writing, and is directed to return with his report any testimony offered before him.

And the court doth authorize and direct the said master to advertize the time and place of taking the accounts herein ordered once a week for four weeks in some newspaper published in the city of Richmond, warning all creditors of the Virginia Oil Com-
63 pany to produce their claims and the evidence to establish them before him on or before the said day.

RO. W. HUGHES, *Judge.*

And at another day, to wit, on the 17th day of May, 1886, came James Lyons, heretofore appointed receiver in this cause, and filed in the clerk's office of said circuit court his bond as such receiver, as required by the foregoing order. Said bond is as follows, viz:

Receiver's Bond.

Know all men by these presents that we, James Lyons and W. W. Henry, of the city of Richmond, Virginia, are held and firmly bound unto the United States of America in the sum of fifteen hun-

dred (1,500) dollars; for the payment whereof we bind ourselves, our heirs and personal representatives, jointly and severally, firmly by these presents.

Witness our hands and seals this 17th day of May, A. D. 1886.

The condition of the above obligation is such that whereas the said James Lyons has been appointed by the circuit court of the United States for the eastern district of Virginia receiver of the assets of the Virginia Oil Company in the suit of Sarah Chauncey Savage, for, &c., *vs.* Virginia Oil Company & *als.*, therein pending, by a decree entered on the 14th day of May, A. D. 1886: Now,
64 if the said James Lyons shall faithfully perform the duties of receiver in the said case, then this obligation to be void; otherwise to be in full force and effect.

JAMES LYONS. [SEAL.]
W. W. HENRY. [SEAL.]

Executed, acknowledged, and approved before me this 17th day of May, A. D. 1886.

M. F. PLEASANTS,
Clerk U. S. Circuit Court, East. Dist. of Va.

And at another day, to wit, at a circuit court of the United States for the district aforesaid held at Richmond aforesaid on the 9th day of October, A. D. 1886, the following order was entered, to wit:

S. C. SAVAGE, for, &c.,
vs.
THE VIRGINIA OIL CO. & *als.*

It is ordered that M. F. Pleasants, clerk, do draw a check upon the fund to the credit of the court in this cause in the Merchants' national bank in favor of the Richmond Whig Company for $23.00 for publishing the master's notice in this cause.

RO. W. HUGHES, *Judge.*

65 And at another day, to wit, at a circuit court of the United States for the eastern district of Virginia, held at Richmond, in said district, on the 7th day of January, A. D. 1887.

This day came James Lyons, receiver in this cause, and filed in open court his report as such receiver.

Said report is as follows, to wit:

Receiver's Report of Sale.

In the U. S. Circuit Court, Eastern District of Virginia, at Richmond. In Equity.

To the honorable the judges of the said court:

The undersigned, James Lyons, receiver of Virginia Oil Company, respectfully reports that, pursuant to the decree of sale herein entered, he did proceed, on June 2d, 1886, to sell all the property of the said Virginia Oil Company. He herewith files as a part of this report an itemized account sales of said sale made by E. B. Cook,

Esqr., auctioneer, and a copy of the advertisement of sale published in the Richmond Dispatch, of the time, place, and terms of sale, pursuant to the decree of sale.

The total amount of the proceeds of said sale, as appears by said statement, was $366.90, to which must be added the sum of seventy-five cents additional, realized on the resale of a stove.

66 Your receiver herewith files as a part of this report an itemized account of the cash and notes received by him from the purchasers at said sale.

The articles embraced in said sale were all the assets of said Virginia Oil Company that came to your receiver's hands or of which he has any knowledge. There were a few book accounts, but they are worthless.

And, having discharged his duties as receiver, he prays that his actions as such may be approved and confirmed and that he may be discharged, &c.

Very respectfully submitted,

JAMES LYONS,
Rec'v'r Va. Oil Co.

Richmond, Va., Jan. 3d, 1887.

Whereupon and on the same day, to wit, on the 7th day of January, 1887, the following order was entered, viz:

S. C. SAVAGE, for, &c.,
vs.
VIRGINIA OIL CO. & Others. } In Equity.

This day came James Lyons, receiver of the Virginia Oil Company, and files his report of sale of the assets of the Virginia Oil Company, pursuant to the decree of sale herein entered, showing that the total amount of the proceed- of said sale was three hundred and sixty-seven dollars and sixty-five cents, and that the total amount of cash received by said receiver was one hundred and twenty-three

67 dollars and eighty-nine cents, and that the said receiver had disbursed in cash the sum of one hundred and twenty-three dollars and eighty-nine cents, as appeared by proper vouchers filed with said report, and that said receiver had deposited the notes, with interest added, given for the balance of said purchase-money, amounting to two hundred and forty-eight dollars and forty-one cents, in the Merchants' National Bank of Richmond to the credit of this court in this cause, as appears by the receipt of the cashier of said bank.

On consideration whereof the court doth adjudge, order, and decree that said report and account of sale of James Lyons, receiver of Virginia Oil Company, stand approved and confirmed, and that said receiver be now discharged from all further duties and liabilities as such.

RO. W. HUGHES, *Judge.*

And at another day, to wit, at a circuit court of the United States for the district aforesaid held at Richmond, in said district,

on the 16th day of February, 1887, the following order was entered, to wit:

S. C. SAVAGE, for, &c.,
vs.
VIRGINIA OIL Co. & Others. } In Equity.

It appearing to the court that the city of Richmond has a
68 lien on the fund to the credit of the court in this cause for the sum of fifty-eight & $\frac{80}{100}$ dollars, being for taxes due for 1885, the court doth adjudge, order, and decree that M. F. Pleasants, the clerk of this court, do check on the fund to the credit of the court in this cause in the Merchants' National Bank of Richmond in favor of A. R. Woodson, city collector, for said sum of fifty-eight & $\frac{80}{100}$ dollars.

RO. W. HUGHES, *Judge.*

And at another day, to wit, on the 5th day of July, 1887, came M. F. Pleasants, heretofore appointed commissioner of this court in this cause, and filed his report as such commissioner. Said report is as follows, viz:

Commissioner's Report.

United States Circuit Court, Eastern District of Virginia.

SARAH C. SAVAGE, Suing for, &c.,
vs.
THE VIRGINIA OIL COMPANY *et als.* } In Equity.

MASTER'S OFFICE, RICHMOND, *July 5th*, 1887.

To the honorable the judges of said court:

69 The undersigned, appointed master in the above-entitled cause by the decree entered therein on May 14th, 1886, begs to say that the notice to the creditors of the defendant company, hereto attached, was duly given and the depositions filed herewith were taken by agreement of all parties.

Upon these depositions, the papers filed in the cause, and the books of the defendant company, your commissioner respectfully reports as follows:

1st. The capital stock issued was to—

John Tyler, May 21, 1881,	50	shares	----------	$5,000 00
John W. Otley, "	50	"	----------	5,000 00
C. W. Tanner, "	50	"	----------	5,000 00
I. Davenport, Jr., "	1	"	----------	100 00
Jno. H. Montague, "	1	"	----------	100 00
C. E. Belvin "	1	"	----------	100 00
Joseph D. Evans, Nov. 12, 1881,	30	"	----------	3,000 00
Sarah C. Savage, May 31, 1884,	100	"	----------	10,000 00
				$28,300 00

The stock certificate to Evans (No. 8) was transferred to J. F. Crane, cancelled, and another certificate issued in its stead to Mr. Crane on April 3d, 1884.

Mrs. Savage's certificate, though dated May 31, 1884, was paid for on the 19th and receipted for on the 20th of that month.

2d. The consideration paid for their stock by John Tyler and John W. Otley was the "good will" of the business of John Tyler & Co. and a number of valuable recipes and formulas for the
70 manufacture of oils and grease, together with the stock and fixtures of that business, the former valued at $8,486.84 and the latter at $1,513.16, nett.

3d. At a called meeting of the board of directors held on June 1st, 1882, a dividend was declared of 13% on "the capital stock of the company owned by stockholders the first six months of the year" and a further dividend of 7% was declared" on the capital stock of the company owned by stockholders the last six months of the year."

The payments under this resolution were as follows, to—

John Tyler	$1,000 00
John W. Otley	1,000 00
C. W. Tanner	1,000 00
I. Davenport	20 00
J. H. Montague	20 00
C. E. Belvin	20 00
J. D. Evans	210 00
	$3,270 00

This dividend was declared by the board of directors at a lawful meeting, at which a proper quorum was present, and was the only dividend ever declared.

4th. Your commissioner finds that at the time of the declaration of the dividend, June 1st, 1882, the company was solvent and prosperous.

Exhibit "A" with Otley's answer shows the earnings of the
71 year to have been $4,229.76. This statement was prepared by Otley himself, but he was then superintendent and salesman, as well as book-keeper, and in the multiplicity of his duties liable to error. On a revision of the books made during the taking of the depositions filed herewith, it is shown that the sales for July, 1881, were omitted from the statement, and other errors discovered, making the sales for the year ending June 30, 1882, $38,410.92, thus increasing the balance by $2,108.09 and making it, instead of $4,229.76, amount to $6,332.85.

I present the following as a statement of the condition of the company:

Assets.		*Liabilities.*	
Stock premium	$8,486 84	Stock	$18,300 00
Machinery, &c.	2,283 41	Bills payable	4,842 18
Cash	315 89		$23,142 18
Bills rec'ble	7,329 93		
Stock on hand	5,947 00		
	$24,363 07	Balance	$1,220 89

I do not present this as an entirely accurate statement. The condition of the books is such that exactness is impossible; but the "assets" side (waiving complainant's objection to the item of "stock premium," which I consider untenable, but which is a question for the court to decide) is substantially unchallenged, and the most careful examination I could make of the books, aided by the counsel for the complainant, Mr. Henry, and by Mr. Otley, convinces me that mistakes have been made both in the items of
72 "stock on hand" and "bills payable," which if rectified would make the balance considerably larger (about $2,500 larger) on the assets side.

The company had during the year purchased about $2,000 worth of machinery and paid off the debt ($1,647.15) due to John Tyler, which it had assumed. It had few or no bad debts and its business was increasing. I think, therefore, that the dividend was paid out of earnings.

5th. In answer to this question I find the following record on the stock book: "No. 2, 50 shares, May 21st, 1881, issued to J. W. Otley, transferred to Va. Oil Co. October 16th, 1883, and certificate cancelled, but no new certificate issued in its place." This stock was purchased on October 16, 1883, by Mr. Tyler of Mr. Otley. It was the result of a proposition of Tyler to Otley that he (Otley) should buy Tyler's and Tanner's stock at 50 % of its par value and Evans' stock at face value or sell his own stock at 50 %. Messrs. Tyler and Tanner depose that the purchase was intended for the company. Mr. Otley swears that nothing was said to him of such intention; that he supposed he was selling to Mr. Tyler individually, and that he was paid by Mr. Tyler's individual check. It is certain that the records show no authority to any one to make such a purchase for the company. The purchase was never legally approved by the company, and finally such a purchase was positively
73 forbidden by the terms of the charter, as it would have reduced the company's stock below the minimum fixed therein. Mr. Otley was aware of this, and both Tyler and Tanner testify that they did not tell Mr. Otley the purchase was made for the company, and Mr. Tanner adds that he has reason to believe that Otley did not know that such was the intention.

As, therefore, no stock has been surrendered to the company, it would seem not required that the condition of the company as to solvency at the time of the sale of the Otley stock should be reported. It may, however, be proper to state that the books of the company were reported by the president on the 4th of June, 1883,

to have been so badly kept that it was impossible to make a definite report of the condition of the company, but that its business kept up well. The sales appear to have been $10,000 larger than in the previous year. No dividend was declared as they had added largely to their plant (some $3,000), and an increase of salaries allowed at a previous meeting by the board "if warranted by the increase of business" was declared not so warranted.

On the whole I gather from the depositions and the books that the business had been profitable, but not sufficiently so to justify a dividend.

74 6th. To the defendants John Tyler as president, J. W. Otley as superintendent, and C. W. Tanner as secretary and treasurer were paid salaries of $100 per month each for the year ending June 1, 1882. On June 5th, 1882, at a lawful meeting of the board of directors, these salaries were increased to $1,500 each per annum, which continued to be paid until the business was closed, except that Otley's salary ceased on the sale of his stock. I do not find by what authority the first year's salaries were fixed, but the sums stated were paid.

7th. The receiver in this cause (James Lyons, Esq.) on January 3d, 1887, reported to the court that the total assets remaining in his hands of the Virginia Oil Company amounted to $248.41. Since that date there has been paid by order of the court for city taxes and advertising the sum of $81.80, leaving in bank to the credit of the court in this cause $166.61. The claims against the company presented to me are a judgment of W. B. Courtney, dated Feb'y 16, 1886, for $302 31
With interest from Dec. 1, 1885, and costs 9 31
Account of Baltimore United Oil Co. (Aug't 11, 1885) 259 98
" First Nat'l Bank of Richmond 144 23

$715 83

The receiver reports that a few book accounts were turned over to him, but they were worthless.

There are doubtless other claims against the company, but the above are all that were presented to me.

75 8th. It would be extremely difficult, if not impossible, for your commissioner to obtain from the books of the company a true statement of its condition on June 1, 1884. The president of the company, Mr. Tyler, who kept the books after discharging the incompetent book-keeper, has made up and filed with his deposition his statement, which is herewith returned marked "Ex. A with Dep. of John Tyler," showing an excess of assets over liabilities of $3,261.45; but in the item of "inventory" as an asset is included $5,000 for the stock purchased from Mr. Otley.

According to the conclusion reached in paragraph 5 of this report this amount must be stricken out entirely or, if the stock was paid for out of the company's money, must be reduced to the price actually paid, viz., $2,500; leaving an excess of assets of $761.45 to represent the whole of the cash paid stock of the company. As Otley's

stock was purchased without authority from the company and was never approved by the company, this item of $2,500 must also be stricken out, and Mr. Tyler's statement presents the company as having lost its entire cash paid stock a- being largely in debt beside-. The formulas and recipes purchased for $8,486.84 were then and have been ever since without value or at least unsalable. In a word, the company was bankrupt.

76 9th. At the request of the counsel for complainant I report, further, that from the books of the company and the books of the Merchants' & Planters' savings bank of this city examined by me it appears that on the day Mrs. Savage's stock was paid for, viz., May 19th, 1884, there was paid to that bank by the company $5,900, of which $4,900 went to take up notes of the Virginia Oil Company endorsed by John Tyler and C. W. Tanner, and $1,000 to take up a note of John Tyler, secured by stock of the company.

It also appears that on May 20, 1884, $300 was paid to Mr. Tyler by the company for loans made to it by him in the previous part of the month. It also appears that on the 18th of that month the cash receipts and payments were very nearly balanced, and that after that date to its close the receipts were about $320, and Mr. Tyler's statement (Ex. A with his dep.) shows the amount on hand to have been $246.32.

It is perfectly obvious, therefore, that the large payments above mentioned were made from the money received from Mrs. Savage.

I return herewith, also at the request of complainant's counsel, a statement of counsel for defendant Otley relating to a portion of said Otley's testimony before the commissioner.

All of which is respectfully submitted.

M. F. PLEASANTS,
Master Comm'r.

77 The notice to creditors referred to in the foregoing report of commissioner is as follows, viz:

Office of M. F. Pleasants, master in chancery, Custom-house building.

RICHMOND, VA., *May 18th*, 1886.

All creditors of the Virginia Oil Company are hereby warned to produce their claims and the evidence to establish them before me, at my office aforesaid, on or before the 16th day of June, 1886, in pursuance of a decree entered May 14th, 1886, by the circuit court of the United States for the eastern district of Virginia in the cause of Savage, For, &c., *vs.* Virginia Oil Company, and all parties interested are hereby notified that I have fixed my office aforesaid and 10 o'clock a. m. on the said 16th day of June, 1886, as the time and place for executing the said decree, and if the same is not completed on that day the execution thereon will continue from day to day at the same place until completed.

The following is an extract from the said decree:

* * * * * * *

(Said decree having been inserted in full at page 59 of this record the extract referred to in above notice is here omitted.

M. F. PLEASANTS, *Clerk.*)

* * * * * * *.

78 Given under my hand this 18th day of May, 1886, at my office aforesaid.

M. F. PLEASANTS,
Master in Chancery, U. S. Cir. Court, E. D. Va.

The depositions returned with the foregoing report of master commissioner are as follows, viz:

Depositions.

In the Circuit Court of the United States for the Eastern District of Virginia.

SARAH C. SAVAGE, Suing For, &c.,
vs.
THE VIRGINIA OIL Co. and Others. } In Equity.

Depositions taken before M. F. Pleasants, master, in execution of the decree entered in said cause on the 14th day of May, 1886, and on due notice to all parties in interest.

MASTER'S OFFICE, *March 7th*, 1887.

Present: W. W. Henry, counsel for complainant.
" F. H. McGuire, of counsel for def'd't Otley.
" C. U. Williams, counsel for def'd't Tyler.

79. C. W. TANNER, a witness of lawful age, being first duly sworn, deposes and says in reply to questions by counsel for John Tyler, one of the defendants:

Question 1. State your age, occupation, and place of residence.

Ans. Age, 28; occupation, oil merchant, and residence, Richmond.

Qu. 2. Were you connected with the Virginia Oil Co., either as a stockholder or officer therein? If so, state what that connection was, when it began, and when it ended.

Ans. I went into the company at first at its organization as seeretary & treasurer; that was in May, 1881. I gave it up on account of my eyes in about six months; after which I was the acting superintendent till the close. I was a stockholder from the beginning.

Qu. 3. State if you know anything of the purchase of the stock in the said company from John W. Otley, by whom it was made, and on what account.

Ans. It was made by the company, the object being to dispense with the salary of $1,500.00 per annum; I mean the salary of Mr. John Otley. I agreed to take part of the duties heretofore discharged by Mr. Otley.

Qu. 4. How long after the purchase of Mr. Otley's stock did the business continue?

Ans. About 21 months.

Qu. 5. On page 15 of the minutes of the Va. Oil Co. appears an entry of Nov. 1st, 1883, a copy of which will be filed as a part of this question. Please look at it and say whether it was a
80 correct account of the proceedings of the directors, if you know.

The foregoing question is excepted to by McGuire & Ellett, counsel for J. W. Otley, on the ground that the entry itself is the best and only evidence of what it contains, and cannot be altered by parol evidence. Its validity and regularity, and that of the act of the board of directors therein set out, must stand or fall on the entry itself without other evidence.

Ans. My recollection of it was that it was correct.

Qu. 6. How much stock was purchased from Mr. Otley and at what price?

Ans. Fifty shares at the price of fifty dollars a share.

Mr. McGuire here retired, but leave is reserved to him hereafter to except to any evidence taken in his absence and to cross-examine any witness on behalf of J. W. Otley with the same effect as if such exception were noted after each question and such cross-examination was had in due course.

Qu. 7. At the time when you became a stockholder was any examination made by you or by any one for you into the business of the Va. Oil Co. before you took the stock?

Ans. My recollection of it was that my father was shown a statement of the affairs of John Tyler & Co., whose business, good
81 will, and fixtures were transferred to the Va. Oil Co. I became one of the original subscribers to the stock of said company on information thus derived.

Cross-examination by W. W. HENRY, counsel for plaintiff:

X Qu. 1. Were you present when the stock of Mr. Otley was bought? And, if so, say whether he was distinctly informed who was the purchaser and how was he paid for it.

Ans. Yes, I was present. My recollection was that Mr. Tyler, acting as spokesman for the company, made him a proposition to buy the stock, and that Mr. Otley had sufficient information to know that Mr. Tyler was buying it for the company. I have no recollection whether he was paid by Mr. Tyler's individual check or the company's check, but Mr. Tyler loaned the company to purchase the stock. The loan was the difference between the price of Mr. Otley's stock and collateral.

And further this deponent sayeth not.

C. W. TANNER.

Adjourned until to-morrow at 12 o'clock m.

M. F. PLEASANTS, *Comm'r.*

TUESDAY, *March 8th*, 1887.

C. W. TANNER recalled by consent and cross-examined by counsel for J. W. Otley:

82 1st X Qu. You have stated that you were present when Mr. Otley's stock was bought. State, as near as you can remember, all that occurred at that time.

Ans. Mr. Otley was at the factory. He was asked to come over there, as the president wished to see him. On his arrival he was asked either to buy our stock or sell his to us. We wished that either he and his friends should buy our stock or that we and our friends should buy his, and he sold his stock to the company. I have recollected this circumstance since my deposition of yesterday. At that time I had no definite recollection about the matter.

X Qu. 2. Were not at that time Isaac Davinport, Jr., John H. Montague, and Charles E. Belvin also stockholders in the company?

Ans. Yes, sir.

X Qu. 3. Had any action up to that time been taken by the stockholders or by the board of directors looking to the purchase of this stock of Mr. Otley?

Ans. I don't think there had been, but I cannot answer positively.

X Qu. 4. You have stated that one of the purposes of this purchase was to save the salary of $1,500 paid to Mr. Otley. Was he told at that time that that was the object of the purchase?

Ans. I have no recollection of his having been told at that time. I do not know what Mr. Tyler may have said to him.

83 X Qu. 5. You have stated: "We wished that either he and his friends should buy our stock or that we and our friends should buy his." Did he refuse this proposition and say that he preferred to sell to the company?

Ans. Mr. Jno. Tyler, president, was speaking for the company and he, Mr. Otley, said he would sell.

X Qu. 6. Did he tell Mr. Otley he was speaking for the Co.?

Ans. My recollection was that the company was not mentioned, but I cannot speak definitely, as my recollection of the conversation is not minute enough.

X Qu. 7. Wasn't Mr. Otley an officer of the company at that time; and, if so, what office did he hold?

Ans. Yes. Superintendent.

X Qu. 8. When you offered to sell to him and his friends, did you propose in that case to sell to the company?

Ans. Yes.

X Qu. 9. Was Mr. Otley authorized to buy stock for the company?

Ans. My object was to sell out to such friends of his as might care to buy our stock.

X Qu. 10. Whose object?

Ans. The president and secretary.

X Qu. 11. Who were the president and secretary?

Ans. John Tyler president, and C. W. Tanner secretary and treasurer.

X Qu. 12. Did Mr. Tyler, in his capacity of president, or you, in your capacity of secretary, own any stock?

Ans. No.

X Qu. 13. Then wasn't this, in fact, the proposition that
84 you and Mr. Tyler made to Mr. Otley, to wit, that either you and Mr. Tyler would sell out you- stock to Mr. Otley and his friends or that Mr. Otley might sell his stock to you and your friends?

Ans. Yes; with the understanding that in both cases we and our friends and he and his friends should represent the company; at least, that was my understanding of it, not remembering exactly what was said to him.

X Qu. 14. Did you communicate that understanding to Mr. Otley?

Ans. My recollection is that nothing special was said on the subject.

X Qu. 15. Don't you know that Mr. Otley did not think that he had sold this stock to the company?

Ans. Judging from a remark made to me afterwards, I had reason to think he did not.

X Qu. 16. You have stated that you were one of the original subscribers to the stock of said company; state how many shares you took and the price paid for them.

Ans. Fifty shares; the price paid was $5,000.00 cash.

X Qu. 17. After you had purchased your stock and for some time after you had been in the business, did you regard the business a good one and were you thoroughly satisfied with your investment?

Ans. Yes.

X Qu. 18. Did you, then, think the said $5,000.00 a fair input into the said business for your share and as against the shares of Messrs. Otley and Tyler?

85 Ans. Yes, sir.

X Qu. 19. Please look at stub No. 2 of the scrip book of the company, dated May 21st, 1881, being for fifty shares of stock issued to J. W. Otley, and state in whose handwriting is the following entry thereon: "Transferred to Va. Oil Co. Oct. 16th, 1883, and certificate cancelled, but no new certificate issued in its place."

Ans. Mr. Jno. Tyler's.

By counsel for the plaintiff:

X Qu. 20. You have said in answer to question 17 that for some time after you had purchased your stock you regarded the business a good one and were satisfied with your investment. How long did this continue, and when was it the business ceased to be satisfactory?

Ans. The business ceased to be satisfactory to me about October or November, 1884. Owing to the influence of a powerful monopoly we lost one of our largest and most profitable customers—the Richmond & Danville system of roads.

X Qu. 21. When did you lose that customer?

Ans. Either in October or November, 1884. The books will show.

X Qu. 22. Had the company been doing a flourishing business up to that time?

Ans. According to my recollection we had.

X Qu. 23. Had the business of the company continuously increased from the beginning of its existence?

Ans. It increased and decreased according to the demand.
86 We were covering more and more territory, but I think the yearly sales were about the same. I could not tell without reference to the books.

X Qu. 24. It seems from the books that a dividend was declared on the stock at the end of the first year's business, in June, 1882, and that no dividend was declared afterwards. Why was it that no dividend was declared afterwards, the business continuing the same?

Ans. My recollection is that we had established an addition to the company's works, a soap factory, some time in the year 1883 or the latter part of 1882. We invested considerable money in it, buying the whole plant, amounting to two or three thousand dollars. In one year, as shown by the minutes of the company, we came out just about even. I think that was the year in which the soap plant was bought.

X Qu. 25. How was it that you considered the business satisfactory to October, 1884, when it was paying no dividend after June, 1882?

Ans. I considered it satisfactory in that we had finished all the necessary experiments to make soap and grease in the cheapest manner possible, and were ready to supply any demand that might be made upon us, as the lack of dividends, according to my understanding, was due to the fact that we had to pay out this money to accomplish these ends.

X Qu. 26. Did the soap business prove profitable? I mean did the profits from it bring in a good income from the investment?

87 Ans. The soap business and the oil business were all in one and I kept no separate account of it. We sold all we could make of it. According to the figures given me by the soap-maker and those made by the company, I had reason to think the business profitable.

X Qu. 27. Had the company made soap previous to the buying of the plant you have spoken of?

Ans. No, sir.

X Qu. 28. Did its entire business consist of making axle-grease previous to that time? And, if not, state what was its business.

Ans. The business was in settling crude oils, mixing oils for lubricating and illuminating purposes, and wholesale dealers in all kinds of oil, in addition to grease.

X Qu. 29. Was the work of the company or any part of it conducted under any patent process; &, if so, what?

Ans. The Maltese car axle grease formula we purchased from

John Tyler & Co. It was not patented, and I know of no patent we had.

X Qu. 30. What was given John Tyler & Co. for this formula?

Ans. There was no specified amount. It was purchased along with the good will of the firm.

X Qu. 31. Did the company ever part with the said formula; and what has become of it?

Ans. No, sir; the formula is in the minds of Mr. Tyler, Mr. Otley, and myself and ready to be given over to any one at the proper time. It is not now in use.

88 X Qu. 32. Who was the inventor of it?

Ans. John W. Otley.

X Qu. 33. When Mr. Otley sold his stock and left the company was he put under any obligation, written or otherwise, not to use the said formula or impart it to others?

Ans. My recollection is that there was a tacit understanding to that effect, and I am satisfied that no one has the formula but the above-named persons.

X Qu. 34. When the company was formed, and afterwards, was the knowledge of the said formula strictly confined to the said Otley, Tyler, and yourself, or was it known to other persons?

Ans. The formula was confined only to the officers named, the materials being put together by irresponsible negroes who did not know the true name or character of the component parts.

X Qu. 35. Can you say that the secret of this formula was not known to others than the three officers named?

Ans. I am certain of it.

X Qu. 36. Was the formula very valuable?

Ans. I so considered it, it being a large inducement to me to subscribe stock in a company which bought out the firm of John Tyler & Co., who originally owned it.

X Qu. 37. Did you not consider that the company had bought the formula absolutely and was entitled to the exclusive use of it, and did you not consider this a valuable asset of the company when you went into it?

Ans. Yes, sir.

89 X Qu. 38. Why was it not put among the assets of the company when it failed?

Ans. I know of no reason, except a mere oversight.

X Qu. 39. What do you consider its value?

Ans. I could not give any definite idea of its present money value, but with facilities we had for selling it when the company was first organized I would consider it a good investment at the price that was then paid for it, whatever its proportion of the stock premium account it might have been.

X Qu. 40. At the time the stock of Mr. Otley was bought was not its purchase the result of an invitation to say what he would give or take on the part of Mr. Otley or Mr. Tyler; and, if so, who made the offer, and how was it responded to? Give the particulars so as to show how the price was arrived at.

Ans. I can't remember how the price was arrived at. It was the

result of such an invitation as you have mentioned on the part of one or the other.

X Qu. 41. Had there not been some difficulty between Mr. Tyler and Mr. Otley which caused the invitation to Mr. Otley to buy or sell, of which you have spoken?

Ans. There was never any difficulty between Mr. Tyler and Mr. Otley that I know of, except a slight difference in their views, from time to time, in the conduct of the business.

X Qu. 42. State the nature of that difference as well as you can. Was it as to the general conduct of the business or as to particular transactions?

90 Ans. As well as I can remember, it was as to the general conduct of the business, principally owing to the fact that the dispositions of the two gentlemen were so different.

X Qu. 43. Was not one or the other or both dissatisfied with the manner in which the business was paying, or, rather, failing to pay?

Ans. Owing to the fact that we were buying him out to save his salary, and possibly to this extent they were dissatisfied.

X Qu. 44. What would you have given him rather than not get rid of him?

Ans. If my memory serves me correctly we might have given him more, but my memory is not positive; that is the impression on my mind now.

X Qu. 45. Then I am to understand that you were determined to get rid of him, and would have given him more than his stock was worth to do so?

Ans. I did not say that. I said we might have given him more.

X Qu. 46. When you went into the company was it not a condition of the subscription that you were to be one of the salaried officers; and, if so, which one?

Ans. Yes, sir; secretary and treasurer.

X Qu. 47. Was the salary agreed on or was it fixed afterwards?

Ans. I don't remember.

C. W. TANNER.

Adjourned till to-morrow at 12 o'clock m.

M. F. PLEASANTS, *Com'r.*

91 WEDNESDAY, *March 9th*, 1887.

JOHN TYLER, being duly sworn, in answer to questions by CHAS. U. WILLIAMS, Esq., deposes and says:

Ques. 1. Are you the John Tyler the defendant in this suit, and were you president of the Va. Oil Co.?

Ans. I am, and was.

Qu. 2. Who were the stockholders in said company when it bought out the business of John Tyler & Co. and who composed the last-named firm?

Ans. The stockholders were John Tyler, John W. Otley, Chas. W. Tanner, Isaac Davenport, Jr., John H. Montague, Charles E. Belvin. John Tyler and John W. Otley composed said firm.

Qu. 3. Was the sale by John Tyler & Co. to the oil Co. known by

all the stockholders whom you have mentioned, and was it acquiesced in by them?

Ans. It was.

Qu. 4. What was the consideration given by the oil Co. for the purchase from John Tyler & Co., and what did John Tyler & Co. transfer to the oil company for that consideration?

Ans. One hundred shares of stock in the oil Co., for which a number of valuable recipes and formulas for the manufacture of oils and greases, together with the stock, fixtures, and good will of the business, the former valued at $8,486.84 and the latter at $1,513.16.

92 Qu. 5. Did the other stockholders whom you have mentioned, exclusive of Mr. Otley and yourself, pay for their stock in money; and, if so, at what price per share?

Ans. They did, at $100.00 per share.

Qu. 6. Mention whether any other persons became stockholders in the oil Co. subsequent to the purchase by that company from John Tyler & Co. If so, who, at what date, and what consideration was paid by them for their stock?

Ans. There were three: Jos. D. Evans, who became a stockholder Nov. 12th, 1881, and paid for 30 shares of stock at $100.00 per share; the next, J. F. Crane, who became a stockholder April 3d, 1884, by purchase from Jos. D. Evans of his 30 shares of stock; the third, Mrs. S. C. Savage, who became a stockholder May 31st, 1884, paying into the company for 100 shares of stock at $100.00 per share.

Qu. 7. At the time that Mrs. Savage became the purchaser what was the condition of the business of the Va. Oil Co.—was it solvent or not?

Ans. It was in a better condition than when the company was first organized, as will be shown by a statement which I herewith file, marked Exhibit A, which shows that the company was in possession of tangible assets over and above all liabilities to the amount of $3,507.77, which does not include the value of recipes and formulas purchased from John Tyler & Co.

93 Qu. 8. State what negotiations, if any, were held with Mrs. Savage before she purchased her stock, or if any negotiations were had with any one acting for her and advising her.

Ans. I had a personal interview with Mrs. Savage, I think, upon the introduction of Col. Wm. E. Tanner, in which she stated she desired to locate her son in some good business, and Col. Tanner had suggested to her the business in which his son and myself were engaged. This interview resulted in a correspondence between us, the tenor of which is shown by my letter marked "Exhibit A," filed with the bill in this cause, dated April 10th, 1884.

Qu. 9. State whether in that letter of April 10th, 1884, you gave what you then believed to be a frank and true statement of the conditions and prospects of the oil Co.

Ans. I did.

Qu. 10. State whether subsequent to the purchase by Mrs. Savage

of her stock the business of the oil Co. was successful for any length of time; and, if so, for how long?

Ans. By a statement given me by the acting sup't, M-. C. W. Tanner, the business showed a profit over and above all expenses for the first 6 months following the purchase of stock of Mrs. S. C. Savage.

Qu. 11. Was the business successful after the end of that six months; and, if not, what causes led to its failure to make money?

Ans. As answer to this question I refer to my report made
94 to the stockholders of the company June 1st, 1885, and filed with the bill in this cause, marked "Exhibit D."

I wish to make a correction to my answer to the 7th question. In stating that the company was in better condition than when it was first organized I overlooked the fact of the cash that had been added to its capital subsequent to its organization; therefore, instead of the answer made at the time the question was put, I desire to say that the company was in a solvent condition, as shown by a statement herewith referred to as "Exhibit A."

Qu. 12. In the stock book of the Va. Oil Co. stub No. 2 shows the issue on May 21st, 1881, of 50 shares to John W. Otley; upon that stub is endorsed, "Transferred to Va. Oil Co. Octo. 16, 1883, and certificate cancelled, but no new certificate issued in its place." Please look at this endorsement and state in whose handwriting it is and whether it is true.

Ans. It is mine and is true.

Qu. 13. State who purchased for the Va. Oil Co. the stock of Mr. Otley, at what price it was purchased, and what considerations led to its purchase.

Ans. Upon consultation with the secretary and treasurer, Mr. C. W. Tanner, I purchased for the company the stock of Mr. Otley, it being part of an agreement had with Mr. Otley, which agreement was recommended and written out by Col. Wm. E. Tanner, so long as I, Mr. Tanner, and Mr. Otley held respectively the shares
95 of stock in the Va. Oil Co. that we did upon its organization, that each should maintain the other in the respective positions as officers of the company as they held at its organization. Therefore, in order to reduce the expenses to the company of the salary of one of its officers, an offer was made to Mr. Otley of $50 per share for his stock, which offer was accepted. This enabled, in addition to the saving of the salary of Mr. Otley, the collection of an overdraft due by Mr. Otley to the company.

Qu. 14. How long after the purchase of this stock did the business of the oil company continue, and what amount of saving in expenses was the result?

Ans. Two years and two months, and the saving to the business for that length of time in salary amounted to $3,250.00. The amount collected, being the overdraft of Mr. Otley, was $685.91, a total of $3,935.91.

Cross-examined by counsel for plaintiff:

X Qu. 1. You have said, in answer to question 3d, that all the

stockholders of the oil company knew of the purchase from Tyler & Co. and acquiesced in it. How did you learn this? Were they all present at the meeting at which this purchase was reported, or did you inform them personally of the proposed purchase before it was made?

Ans. I had a personal interview with each of the stockholders, or, I should have said, with each of the gentlemen who afterwards became stockholders, at which interview the objects and intention-
96 tions of the company were fully stated.

X Qu. 2. Were these interviews before the Va. Oil Co. was organized, and with a view of getting these gentlemen to subscribe?

Ans. They were.

X Qu. 3. Did you state to the gentlemen whom you so interviewed that $8,486.84 would be charged for the recipes and formulas held by John Tyler & Co. and $1,513.16 would be charged for the stock, fixtures, and good will of that firm, and thus that yourself and Mr. Otley would pay no money, but would receive stock certificates for $5,000.00 each in the new corporation?

Ans. I cannot recall the exact statements made to these gentlemen, but have no doubt that the case was fully stated.

X Qu. 4. Mrs. Savage in her bill states that she paid into the treasury of the company $10,000.00 on the 19th of May, 1884, in full of her subscription for 100 shares of stock. Is this statement correct?

Ans. It is.

X Qu. 5. Please look at the books of the company and say whether it is entered on the cash account as of that date.

Ans. It is.

X Qu. 6. Please say what disposition was made of the said money—I mean how was it paid out by the company.

Ans. About one-half of that amount was paid out to bills payable on which the company was paying 8 % interest. The bal-
97 ance went to the purchase of material and ordinary expenses of the company.

X Qu. 7. To what bills payable were the payments made?

Ans. The bulk of the amount for a loan made by the Merchants' & Planters' savings bank.

X Qu. 8. I find on the cash book that $1,000 was paid you on May 19th, 1884. Say whether that was not a part of this money.

Ans. I was lending, from time to time, to the company various sums of money, on which I was allowed the same rate of interest as paid to the banks. On that date the company was indebted to me for such loans upwards of $6,000.00. It is very possible that the amount named was a return in part of such loan, upon which the company would be saving interest.

X Qu. 9. In Exhibit A, which you have just filed with your deposition, you place the inventory on June 1st, 1884, at $17,177.68. Please give the items showing how much of this is for machinery and how much for stock on hand.

Ans. I got it from the inventory book, as follows:

Stock & material	5,532 55
50 shares Va. Oil. Co. stock	5,000 00
Machinery & fixtures	5,794 49
Cash	850 64
	$17,177 68

X Qu. 10. It appears that you have put upon Exhibit A $246.32 as cash on hand June 1st, 1884. Is that included in the $850.64, as appears on the inventory of that date?

98 Ans. At the request of the commissioner I made off a hurried statement, and find upon referring to the inventory book that the cash on hand was included in the inventory of that date. Therefore the amount stated is an error and should be deducted from the total amount of assets as shown on Exhibit A.

Adjourned until to-morrow at 12 o'clock m.

M. F. PLEASANTS, *Com'r.*

COMM'R'S OFFICE, *March 10th*, 1887.

Cross-examination of JOHN TYLER continued:

X Qu. 11. In arriving at the item of $5,532.55, value of stock and material, how was the said stock and material valued—at cost or at what was estimated its market value on June 1st, 1884?

Ans. In estimating the value of stock in taking inventory it was customary to take value of stock at prime cost, except where the value of the goods in stock was less at the time of taking inventory than when purchased. In such cases the benefit of the decline was given to inventory.

X Qu. 12. Does this apply to the goods on hand manufactured as well as to the raw material?

Ans. It applies to all classes of stock.

X Qu. 13. How did you arrive at the prime cost of the goods manufactured included in said inventory?

Ans. The value of materials used plus actual labor bestowed in manufacture furnished cost of same, but there were no ex-

99 penses of manufacture estimated beyond actual labor. The rent and salaries of officers was not estimated.

X Qu. 14. Is the fifty shares of stock included in said inventory the same purchased from Otley?

Ans. Yes.

X Qu. 15. When the purchase was made of Otley was the $2,500.00 paid him by money or check or was that sum credited on his account with the company; and, if the latter, what balance was due him and how was it paid?

Ans. The books show that his account stands credited with $2,500.00, and that he was paid in cash $1,814.09, this being the difference between the debit and credit sides of his account.

X Qu. 16. When he was paid the said balance did Mr. Otley understand that it was the difference between $2,500.00 and the balance due by him to the company on account? And state anything that

you may remember that may indicate Mr. Otley's understanding of who was the purchaser of his stock.

Ans. He did understand that it was said difference. The conversation had with Mr. Otley with regard to the transfer of his stock is not sufficiently clear for me to recall it in detail.

X Qu. 17. State how the sum of $5,794.49, value of machinery and fixtures, was arrived at. Was it the then estimated market value of them or was it their original cost and costs of repairs?

Ans. It was their original cost, without the cost of repairs.

100 The latter was part of the expense account.

X Qu. 18. Was the said machinery and fixtures then worth that sum; I mean could you have then gotten that sum for them?

Ans. They were considered to be worth that sum for the company's uses. What they could have been sold for I cannot say.

X Qu. 19. After the company determined to wind up, in September, 1885, did you not try to sell the said machinery and fixtures until a receiver was appointed; and, if so, what did you offer to take for them?

Ans. I never did offer to sell the total machinery and fixtures of the company, but had some conversation with a party looking to the utilization of the soap machinery, but I do not recollect offering to sell them.

X Qu. 20. Why did you not offer to sell them, as you were winding up the affairs of the Co.?

Ans. I do not recollect the particulars of the negotiations upon the subject.

X Qu. 21. Do you, then, mean to say that you did or did not offer them for sale?

Ans. I do not recollect whether I did or did not offer any portion of them.

X Qu. 22. After the appointment of a receiver did he not consult you as to the price which he should take for the said machinery and fixtures; and, if so, what did you tell him to take if he could get?

Ans. The said receiver did. I do not recollect what price

101 he mentioned in connection with a sale of the same.

X Qu. 23. Was it not less than $1,500.00?

Ans. I do not recollect.

X Qu. 24. Do you not recollect that it was an amount which the receiver understood would be offered by a party through John W. Otley?

Ans. I do.

X Qu. 25. Did you not advise him to take the offer if he could get it?

Ans. My impression is that I did.

X Qu. 26. Is this the same machinery and fixtures which was sold by the subsequent receiver?

Ans. I presume it was, although not present at the sale.

X Qu. 27. How did you make up the statement "A" upon which I have been questioning you? And if you got it from the books, please indicate the pages.

Ans. I got them from the books, but it is impossible to indicate the pages, as I had to go through the books to get the items.

X Qu. 28. Are the books so kept as to show the gross sales for the different years?

Ans. The merchandise account will show that.

X Qu. 29. Please look at that account and state the gross profits for each year.

Ans. For the year ending June 1st, 1882, merchandise account shows a balance of $9,823.61; for the year ending June 1st, 1883, the same account shows a balance of $12,756.41, which seems
102 to include the previous year; for the year ending June 1st, 1884, the balance in 1884 was $19,810.30, which seems to include the two previous years. I find by reference to statement of 1885, marked "Exhibit C," the gross profits for the year previous to June 1st, 1885, were $7,118.84.

X Qu. 30. State what were the expenses for the said several years, including the pay of the officers.

Ans. It would be impossible to give in detail the expenses for each year, except from the year 1884, as the books had been kept for one or two years by incompetent book-keepers. The salary of the officers for the first year was $1,200.00 for the president, secretary, and superintendent each; after June 5th, 1882, $1,500.00 each, except as to Mr. Otley, whose salary ceased when he sold his stock.

X Qu. 31. Does your profit and loss account on May 31st, 1884, show these expenses up to that time? If so, please state what the several items are.

Ans. The following is a transcript from the ledger, profit & loss ac.:

Balance	390 60	By bal. from—	
Gen'l exp.	6,142 46	Mdse. ac.	36,987 98
Trav'l exp.	3,123 93	Commissions	238 79
Wages	8,487 10	Cash	435 17
Salaries	14,541 92	Balance	209 65
Int. & disc't	1,915 58		
Dividends	3,270 00		
	36,871 59		36,871 59

103 X Qu. 32. I find at a meeting of the board June 1st, '82, that it was determined to declare a dividend of 13% for the first six months of the preceding year and a dividend of 7% for the last six months of said year; and I find upon the inventory book, p. 59, a summary of the condition of the company on June 1st, 1882. Please state whether that summary appearing at that page was the one before the board, and give the items.

Ans. I presume it was.

Machinery & fixtures		$2,283 41
Cash balance in bank		307 50
" " " drawer		8 39
To carry ticket		1,553 08
Bills rec. sundry persons		7,329 93
Inventory of stock		5,947 00
Total assets		$17,429 31
Bills payable:		
Sundries	4,713 15	
Cash investment	8,300 00	
		13,013 15
Gain		4,416 16

Adjourned till to-morrow, March 11th, at 12 m.

M. F. PLEASANTS, *Comm'r.*

104 COMM'R'S OFFICE, *March 11th*, 1887.

Cross-examination of JOHN TYLER continued:

X Q. 33. In the settlement between the company, Tyler, and Otley for their stock it appears that the amount of inventory turned over was $2,450 51

Mdse. balances & cash 314 05

2,754 56

And the debts due by Tyler & Co. 1,647 15

To John Tyler was charged against the assets turned over. How was that debt settled?

Ans. It was credited on my account with the company.

X Q. 34. In the said statement from inventory book the item of "cash investment, $8,300.00," appears and is added to the bills payable, and the sum taken from the total assets. What does that item of $8,300.00 consist of? Was it not money paid in by the stockholders other than Otley and Tyler?

Ans. I suppose it was.

X Qu. 35. When did you commence keeping the books of the company?

Ans. About March, 1883.

X Qu. 36. At the meeting of the stockholders on June 4th, 1883, it is stated by the record that you, as president, reported that the books had been badly kept by a recently discharged book-keeper, so that it was difficult to state the exact condition of the company. Did you attempt to make before that meeting or afterwards a statement of the condition of the company such as you made in the years before and afterwards?

105 Ans. I suppose some statement was made from the best data that could be gotten.

X Qu. 37. Did you at any time endeavor to straighten up the books so as to get at the condition of the company for that year?

Ans. I worked for many months on the books for the purpose of arriving at an exact balance.

X Qu. 38. At the stockholders' meeting, October 5th, 1882, it appears by the record that the stock of the company was ordered to be increased from $18,300.00 to $30,000.00, and that the officers shall have the option of issuing the same as the necessities of the company require. Was it not under this authority that you offered and sold the stock taken by the plaintiff?

Ans. I suppose it was.

X Qu. 39. It appears that on August 31st, 1885, you recommended to the stockholders an immediate winding up of the affairs of the company; that the salaries be stopped and the stock, material, and fixtures be sold as soon as practicable, paying off the debts of the company, &c. Was this ordered?

Ans. The record so shows.

X Qu. 40. Did you at once endeavor to carry out the order and so continue until the receiver was appointed?

Ans. I did.

X Qu. 41. Did you collect all the accounts that could be collected during that time?

Ans. I endeavored to collect as closely as possible until the receiver was appointed.

106 X Qu. 42. Of the accounts turned over to the receiver were they not mostly small balances—balances that had been standing a long time and considered doubtful or bad?

Ans. We had very few accounts on our books that were considered doubtful or bad. The proportion of such I cannot remember.

X Qu. 43. Did you enter on your merchandise account all purchases, whether paid for or not, as of the date they were made?

Ans. Yes.

X Qu. 44. What purchases were made for cash between the 19th May, 1883, and the 1st June, 1883?

Ans. It would be impossible to say exactly what purchases were made for cash for the period named.

Re-examined by Mr. WILLIAMS:

Qu. 1. Is the Va. Oil Co. indebted to you? If so, to what amount? And are you bound as endorser for said Co.? If so, for what amount?

Ans. My confidence was such in the prospects for business of the company that I freely loaned money as I had it and endorsed their paper. At the time the books were turned over to the receiver my account stands credited with $5,189.88. Since which time I have paid upon my endorsement for the company $1,100.00, and still am held for $500.00 more, making the total indebtedness of the company to me $6,789.88.

Recross-examined by Mr. HENRY:

107 X Qu. 1. Of the said $5,189.88 is not a part the money paid Otley for his stock which was advanced by you; and

were you not also credited on your account by $1,000.00 dividend, declared in June, 1882?

Ans. The money I advanced the company was put into the treasury, and from thence was drawn such amounts as the company had need of from time to time. The books show that the amount of the dividend as stated was credited, which was also done in the case of all the other stockholders, and they all received their dividend.

JOHN TYLER.

Exhibit "A," filed with the deposition of John Tyler, is as follows, viz:

Statement of Va. Oil Co. June 1st, 1884.

ASSETS.		LIABILITIES.	
Cash	$246 32	Bills payable	$10,150 43
Inventory	17,177 68	Loan of John Tyler	5,292 20
Open ac's	3,092 68	Open ac's	1,566 28
	$20,516 68		$17,008 91
Actual assets over liabilities	3,507 77	Actual assets over liabilities	$3,507 77
Stock premium	8,486 84		
	$11,994 61		

108 W. E. TANNER, being duly sworn, deposes, in answer to questions by C. U. WILLIAMS, Esq.:

Qu. 1. State whether you took $5,000.00 of the stock of the Virginia Oil Company when it was organized; if so, whether you paid for it and at what price.

Ans. I furnished my son, Charles W. Tanner, $5,000.00 to be invested by him in the stock of the Va. Oil Co. at par.

Qu. 2. Prior to this investment did you or any one for you examine into the business of John Tyler & Co. and the plan of organization of the oil Co., and were you made acquainted with the fact that the company was to issue $10,000 of stock for the purchase of the business, good will, &c., of John Tyler & Co.?

Ans. I gave the matter a cursory examination, but to the best of my recollection I think I relied principally upon a statement of the company's affairs prepared by Mr. E. Bruce Cook, who was then my book-keeper. I think that I was informed that there would be an issue of $10,000 of stock for the purpose indicated in the question.

Qu. 3. Do you know Mrs. Savage, the complainant in this suit, and had you any conference with her in regard to her purchase of stock in the oil company? If so, state what occurred as nearly as you can remember.

Ans. I know Mrs. Savage. By virtue of a loan made by her to the Tanner & Delaney Engine Co., of which I was then president,
109 one of her sons was employed by said Tanner & Delaney Engine Co., and she asked me if I knew of a position that could be obtained for her younger son, provided she could

furnish a suitable sum of money for that purpose. Being aware of the fact that the Va. Oil Co. needed money for the extension of their business, I suggested to Mrs. Savage that possibly they might take her son if she would furnish them the necessary capital.

Qu. 4. Did you inform Mrs. Savage that you had looked into the business and had contributed to its stock, as above stated by you?

Ans. I do not recollect of saying more to her than simply announcing the fact that I had furnished my son $5,000 in cash, which he had invested in the stock of the Virginia Oil Company.

Cross-examined by counsel for complainant:

X Qu. 1. Have you the statement of the affairs of the Va. Oil Co. prepared by Mr. Cook, to which you have referred?

Ans. I have not.

X Qu. 2. Do you remember what profit it indicated in the business?

Ans. I do not. I gave very little attention to the matter, as I was much engaged with the affairs of my own business.

X Qu. 3. Do you remember if there was any inventory of the assets of the company shown in that statement, or was it only a statement of profits?

Ans. I recollect very little as regards the contents of the
110 statement. I cannot really say whether it touched upon the question of profits or not. The gentlemen connected with the firm of John Tyler & Co. seemed very enthusiastic as to the prospects of their enterprise, in which confidence my son fully shared, and I furnished him the money more upon his judgment of the matter, as expressed to me by him, than upon any examination of the subject which I had been able to give myself.

X Qu. 4. When Mrs. Savage spoke to you about a position for her younger son was it not her desire to make a similar arrangement about him with the one she had made about her elder son with your company?

Ans. I think it was.

X Qu. 5. Did you not tell Mrs. Savage that John Tyler, president of the Va. Oil Co., was a reliable man, and did you not introduce her to Mr. Tyler that she might make the negotiation with him herself?

Ans. I have no recollection of having introduced Mr. Tyler to Mrs. Savage, but have no doubt that I did so introduce him, and that I also stated to Mrs. Savage that he was a gentleman of integrity and reliability, that being then my opinion of him, as it is now.

X Qu. 6. Did you know anything personally of the affairs of the Va. Oil Co. at that time?

Ans. Nothing, except what I heard casually from the officers of the company, whom I frequently met.

WM. E. TANNER.

The taking of these depositions was here adjourned.

M. F. PLEASANTS, *Com'r.*

111 COMM'R'S OFFICE, *March* 22*d*, 1887.

The examination of Mr. JOHN TYLER, which was, by consent, continued, is now, by consent, resumed.

Cross-examination by McGUIRE & ELLETT, counsel for Mr. John Otley:

X Qu. 1. Were there any by-laws of the Va. Oil Co.?

Ans. There were.

X Qu. 2. Was there provision in them for a board of directors; and, if so, what number constituted a quorum of said board?

Ans. Three members of the board of directors constituted a quorum.

X Qu. 3. By Exhibit I, filed with your deposition, purporting to be an extract from minutes of the company of Nov. 1, 1883, it appears that you reported that the stock owned by J. W. Otley had been purchased on account of the company, and that, on motion of Mr. Tanner, the action of the president in that behalf was endorsed. Look at said exhibit and state how many of the board of directors were at that meeting.

Ans. By the minutes of the board there appear to have been two members present.

X Qu. 4. What was your proposition to Mr. Otley when you bought his stock?

Ans. The proposition was to buy his stock at 50 cents in the dollar for cash, deducting his overdraft on the books.

X Qu. 5. Did you tell him that this stock was to be cancelled?

112 Ans. I do not remember.

X Qu. 6. Did you tell him that you were buying the stock for the company?

Ans. I do not recollect.

X Qu. 7. Was any action taken by the company looking to the purchase of this stock prior to October 16th, 1883?

Ans. Not that I recollect.

X Qu. 8. In your answer to your 13th question you say: "This enabled, in addition to the saving of the salary of Mr. Otley, the collection of an overdraft due by Mr. Otley to the company." Was not Mr. Otley then and has he not since been always perfectly solvent and able to pay any overdraft of his?

Ans. I did not know then nor do I know now anything about the financial condition of Mr. Otley, but having the money in hand enabled the prompt collection of a debt which, even if Mr. Otley had been solvent, might have been delayed some time.

X Qu. 9. Did you fear the loss of this overdraft if it was not settled in this way?

Ans. Knowing nothing of Mr. Otley's ability to pay, I considered it the part of prudence to make sure of this amount.

X Qu. 10. Did you think the stock of Mr. Otley at that time fully worth 50c. on a dollar?

Ans. I did.

X Qu. 11. Referring to your answer to the 13th question, did

your purchase of Otley's stock have anything to do with the
113 agreement you therein speak of, to wit, that you three—Otley, Tanner, and yourself—should mutually support each other in your respective positions as officers of the company?

Ans. I think the question is fully answered in my answer to question 13.

X Qu. 12. Do you mean thereby to say that Mr. Otley and Col. Wm. E. Tanner had any knowledge of your purpose to buy said stock or your object in buying it, or that they were at all consulted about it?

Ans. Mr. Otley, being familiar with the agreement, must have been aware of the advantage to the company in owning his stock.

X Qu. 13. When was this agreement that you speak of made?

Ans. Answer to question 13 sets forth the nature of that agreement, which was made upon the original organization of the company.

X Qu. 14. Was any reference to or mention made of it at the time of the purchase of Otley's stock?

Ans. I do not remember.

X Qu. 15. Were Col. Tanner or Mr. Otley consulted about this purchase for the company, or informed of your purpose or object in purchasing?

Ans. I do not remember.

X Qu. 16. Was not this an agreement between you, Otley, and Tanner, that so long as you were all stockholders of the company you would maintain each other in your respective positions, and not that when Mr. Otley sold his stock it should be purchased by the company for cancellation?

Ans. The agreement had reference only to the positions to
114 be occupied by Tanner, Otley, and Tyler so long as they were stockholders.

X Qu. 17. How was Mr. Otley's stock settled for?

Ans. My answer to question 15 states how.

X Qu. 18. Please state again.

Ans. "The books show that his account stands credited with $2,500.00, and that he was paid in cash $1,814.09—this being the difference between the debit and credit sides of his account."

X Qu. 19. Who made those entries in the books?

Ans. I was keeping the books at the time and made the entries myself.

X Qu. 20. Did Mr. Otley in fact receive $1,814.09 in cash?

Ans. I suppose he did.

X Qu. 21. Please endeavor to recall the facts of this transaction and state if they were not as follows, to wit: Mr. Otley owed on said stock said overdraft of $685.91 and also the sum of about $900, for which his stock was pledged as collateral at the Merchants' & Planters' savings bank; and by way of settlement for said stock did you not agree to pay said overdraft and also said debt of the Merchants' & Planters' bank and to pay the balance of said $2,500.00 to said Otley, and did you not in fact only pay him the said balance after paying said debts?

Ans. I had entirely forgotten the mode of settlement for Mr. Otley's stock except the plain statement furnished by the books; but your statement recalls to my mind that there was some ar-
115 rangement, the details of which I do not remember, by which a debt of Mr. Otley to the Merchants' & Planters' savings bank was embraced.

X Qu. 22. At the date of this purchase was not the Va. Oil Company largely indebted to you?

Ans. It was.

X Qu. 23. Is this the receipt given by you as president of said company to Otley for said overdraft?

"RICHMOND, VA., *October 16th*, 1883.

"Received of John W. Otley the sum of six hundred and eighty-six $\frac{00}{100}$ dollars in full of all claims and demands to date.

"VIRGINIA OIL COMPANY,
"By JOHN TYLER, *Pres't.*"

Ans. It is. The original receipt is here filed, marked X.

X Qu. 24. Was the said company indebted to you at that time in a sum exceeding $2,500.00?

Ans. It was.

X Qu. 25. Look at the paper now shown you, being "Exhibit A" filed with Mr. Otley's answer, and say whether it is a true statement of the earnings for the year ending May 31st, 1882.

Ans. I was not keeping the books at that time, but as far as my recollection goes the statement was made up from the books, and I believe it to be correct.

X Qu. 26. Was the dividend declared at that time based upon this statement; and, if so, what was the amount of dividend?
116 Ans. I think it was, the amount being $3,270.

And further this deponent sayeth not.

JOHN TYLER.

Mr. JOHN W. OTLEY, a witness of lawful age, being duly sworn, deposes and says as follows:

By McGUIRE & ELLETT:

Qu. 1. Are you the Jno. W. Otley, a defendant in this suit?

Ans. I am.

Qu. 2. Have you had any connection with the Va. Oil Co. since Octo., '83?

Ans. None, except selling all the goods I could.

Qu. 3. How was your connection with the company severed?

Ans. It was severed upon a proposition made by Mr. Tyler to buy my stock at 50 cents on the dollar or to sell his and Mr. Tanner's at the same price and his uncle, Mr. J. D. Evans', of New York, at 100 cents on the dollar. I sold at 50c. and resigned my position, thus severing my connection with the company.

Qu. 4. Mr. Tyler states in his deposition that he bought your stock for the company. Did he so inform you when he bought it,

and did you sell to the company, or did you suppose that you were selling to the company?

Ans. He did not so inform me. I did not sell to the Co. I believed at the time that it was being purchased for another party; nor did I know that the company had cancelled the stock until some months afterwards, when, upon enquiry of the secretary and treasurer, to whom had he transferred my stock, — said, "The
117 company thought it best to cancel it.

Qu. 5. How were you settled with for said stock?

Ans. By Mr. Tyler assuming an amount due to the Merchants' & Planters' bank for which my stock was pledged as collateral, for some months yet due; also assuming a balance against me on the books of the Virginia Oil Company and the rest by his individual check on the State bank.

Qu. 6. Did you know when Tyler so assumed your indebtedness to the company that the company was then largely indebted to him?

Ans. Yes; about $2,300.00.

Qu. 7. In pursuance of that settlement did he give you a receipt in full of your indebtedness to the company?

Ans. He did. I produce it. It is the same filed by Mr. Tyler this morning.

Qu. 8. How did you regard the company at the time you sold out—as solvent or not?

Ans. I regarded it as in a flourishing condition and would have preferred to have bought than sold at the price I sold had the conditions been the same as to giving or taking the price named.

Qu. 9. What were the conditions proposed to you?

Ans. The conditions were that Tyler's stock and Tanner's should go at 50 cents and Evans' stock should go at par.

Qu. 10. Did you extend credit to the company after your connection was severed by selling them goods?

Ans. I did.

Qu. 11. Explain, if you can, why the company became
118 embarrassed and lost its business afterwards.

Ans. Shortly subsequent to the sale of my stock to Mr. Tyler changing the ownership of the R. & D. R. R. Co. and the removal of the purchasing department of the C. & O. R. R. from this city to New York caused the loss of that business, which is the most profitable on their books. This necessitated an extra effort on their part to secure other fields and customers, which was done at large expense, but with little return. Railroad companies about this time began to use some oils in which the margin of profit was very small and discontinued the use of car grease, in which the profits were very large.

Qu. 12. Look at the paper now shown you, being Exhibit "A" filed with your answer, and say whether that is a true statement of the earnings of the Virginia Oil Company for the year ending May 31st, 1882.

Ans. It is, to the best of my knowledge and belief.

Q. 13. Was that statement and the profits shown thereby the basis of the dividend declared and paid to the stockholders in that year?

Ans. It was. We paid out in dividends $3,270.00, leaving the balance to stock premium.

Qu. 14. Before your connection with the company was severed and while you were a stockholder and member of the board of directors was the purchase of your stock or of anybody else's stock provided for or contemplated by the company or the board of directors?

119 Ans. No, sir.

And further this deponent sayeth not.

JNO. W. OTLEY.

The taking of these depositions was here adjourned until March 31st, 1887.

M. F. PLEASANTS, *Comm'r.*

U. S. COMMISSIONER'S OFFICE,
RICHMOND, VA., *March* 31*st*, 1887.

Present: W. W. Henry, Esq., for complainant.
" F. H. McGuire, " " defendant.
" J. W. Otley, a witness.

Cross-examination of J. W. OTLEY:

X Qu. 1. Previous to your sale of stock of the Virginia Oil Company had there been any disagreement between you and Mr. Tyler and Tanner or either of them as to the management of the business?

Ans. Yes; there was some disagreements; one in particular.

X Qu. 2. Please state the nature of it.

Ans. It arose from want of a proper push and energy on the part of those two gentlemen, as far as my judgment was concerned. I regarded myself as having too much to do; while the other two, being equally interested, did not give me the assistance I thought they should.

X Qu. 3. When did this state of things commence, or had it continued from the beginning?

120 Ans. Possibly the latter part of the year '82. I do not remember distinctly as to that.

X Qu. 4. How had the business been from the beginning of the company until you sold out? Had it been about uniform, or had it increased, or had it diminished?

Ans. My recollection is that there had been some increase.

X Qu. 5. How did the business of the company compare with the old business of John Tyler & Co.?

Ans. The bulk of the business was very much larger and attended with heavier expenses.

X Qu. 6. Did both you and John Tyler give personal attention to the affairs of the business as partners of the firm?

Ans. Mr. Tyler's attention was directed more particularly to the financial part; my duties pertained to the manufacture and sale of goods.

X Qu. 7. Look at Exhibit "B" with your answer and say who made it out for you.

Ans. A gentleman by the name of Craig.

X Qu. 8. Did you assist him in making out this statement in any way?

Ans. As far as my recollection goes, I did not; the statement was made at my request for the purpose of ascertaining the worth of the concern with a view to buying the stock of Mr. John Tyler.

X Qu. 9. Did you have this statement before you sold to Mr. Tyler?

Ans. I think I had had it, but it — nothing to do with the sale to Mr. Tyler.

121 X Qu. 10. Did you ever compare it with the books, so as to be able to say whether it is accurate or not?

Ans. I never compared it with the books. I accepted it only as my book-keeper's statement.

X Qu. 11. In the column of "resources" I find dividends, $3,270.00. Is not that the dividend that was declared and paid at the end of the first year?

Ans. To my recollection, it is.

X Qu. 12. In the same column stock premium is put at $6,883.70. Is not that the amount or part of it at which the good will of John Tyler & Co. was estimated in settling for the stock of yourself and John Tyler?

Ans. I think it represents part of it. The old books of John Tyler & Co. show exactly what the stock premium was at the organization of the company, which was made out and arrived at by Mr. Bruce Cook, book-keeper at that time for Col. Wm. E. Tanner. I do not know where the books of John Tyler & Co. are; consequently can't speak as to the exact amount of stock premium at that time.

X Qu. 13. Upon said statement the liabilities on the 1st of January, 1883, are put at $27,505.12, and by adding the said amounts for dividends and stock premium to other resources of the company the resources are made equal to the liabilities.

X Qu. 13¼. Did you consider the said dividends and stock premium as available assets of the company?

Ans. That depends upon what you consider available assets.

122 If you mean a marketable value to close up business they could not be considered an asset. If you mean as a basis of value, so far as business is concerned, to be continued or sold to other parties as a business the matter of stock premium is always regarded an asset.

X Qu. 14. What do you mean by stock premium?

Ans. Bonus always paid by the purchaser when one party sells his business to another.

X Qu. 15. If you deduct either one or the other of these items from the column of resources or assets does not this statement show that the liabilities of the company on 1st January, 1883, exceeded its assets?

Ans. That depends how you treat the matter of stock premium.

If to close business, it does; if to sell business with good will, it does not.

X Qu. 16. In the item upon this statement, "ac's due the concern," to wit, $7,126.64, was there not, in fact, many of the accounts which were bad or could not be collected?

Ans. We had no bad or uncollectible accounts at that time, so far as I know, and I think the books will bear me out.

X Qu. 17. The item "machinery," viz., $2,686.58, was not this the cost of the machinery and not its then marketable value?

Ans. I can't say as to that.

X Qu. 18. After the company's affairs went into the hands of a receiver were there any negotiations between you and the receiver looking to the purchase of the machinery; and, if so, what
123 were you willing to give for it?

Ans. Yes; there were negotiations. I offered $1,475.00 as the machinery then stood, knowing at the time it would cost me a great deal of money to take it down and remove it; also the condition of the machinery had been very much impaired from neglect. I thought the above figures, under the circumstances, was a fair price. The price asked by the receiver was between $1,500.00 and $1,600.00. I subsequently bought elsewhere.

X Qu. 19. How came Mr. Craig to make the statement marked Exhibit "B" with your answer? Had he had anything to do with the books before, and did Mr. John Tyler see the said statement about the time that it was made?

Ans. My recollection is it was made at my request and he was book-keeper at that time. I presume Mr. Tyler saw the statement.

X Qu. 20. The records of the company show that at the end of the year, June 1st, 1883, the president reported that he could not tell what had been the result of the business of the previous year because the books had not been accurately kept. Were the books afterwards written up by Mr. Craig or any one else so as to show the condition of the business—I mean in any other way than the statement, Exhibit "B," on which I have been examining you?

Ans. I notice on reference to the books Mr. Tyler took charge of them 1st March, 1883. If he ever rendered any statement
124 as to the company's business for the year I don't remember to have seen it. At the time I sold to him I think he had a statement, tho' I don't remember to have seen that. I understood the business sufficiently well and didn't ask to see it.

Re-examination:

Qu. 1. You have been examined by Mr. Henry as to the paper filed with your answer marked Exhibit "B." What period did that settlement cover?

Ans. From the organization of the company to January 1st, 1883.

Qu. 2. You have stated that it was made out at your request with a view to buying Mr. John Tyler's stock. With such a purpose in view was it or not proper and necessary to include in the statement

the amount of dividends and stock premiums earned, whether paid out or not?

Ans. I think it was.

Qu. 3. Look at statement marked Exhibit "A" filed with your answer and state whether it is a true copy from the books of your company, and whether it shows truly the nett amount of its earnings for the year ending May 31st, 1882.

Ans. It is a true copy and shows the amount of earnings on the capital stock of the company $18,300.00 at that time.

Recross-examination:

X Qu. 1. Look at page 59 of Inventory Book and say in
125 whose handwriting the statement found on that page is made.

Ans. The statement you refer to appears to be in my handwriting and only shows in an unofficial way the earnings of the company for the year ending June 1st, 1882, which shows a gain $4,416.16, arrived at as follows:

Machinery & fixtures	2,283 41
Cash balance in bank & elsewhere	1,868 97
Bills receivable sundry persons	7,329 93
Inventory of stock mdse.	5,947 00
Total assets	17,429 31

Liabilities.

Bills payable:	
Sundries	4,713 15
Cash investment	8,300 00
	13,013 15
Gain	4,416 16
	17,429 31

X Qu. 2. Is not the item of $8,300.00 the amount paid in on stock other than the stock held by yourself and John Tyler; and why was not the stock of yourself and Tyler put down among the liabilities?

Ans. It was. As I said before, it is an unofficial statement and made to approximate in another way what the company had earned the past twelve months, being different from that in the statement marked Exhibit "A," and as a further proof no mistake in
126 the statement "A" had been made. The stock of myself and Tyler or anybody else's had no place in that statement showing earnings on stock.

And further this deponent saith not.

JOHN W. OTLEY.

And thereupon the taking of these depositions is here concluded.

M. F. PLEASANTS, *Comm'r.*

The following admission was filed with above deposition of John W. Otley as of its date:

It is admitted that the item of $1,553.08 appearing in the statement on page 59 of Inventory Book and entered there as "to carry ticket" is the amount of indebtedness of John Tyler & Co. to John Tyler June, 1881, which was assumed by the Virginia Oil Company and which was credited on the ac. of John Tyler with said company. The said item of $1,553.08 is aggregated by Mr. Otley with the cash in bank and in drawer in his answer to recross-question 1, and in answer to next question he explains the object of the statement.

McGUIRE & ELLETT, *For Otley.*

June 30th, 1887.

127 The following paper was filed with the deposition of C. W. Tanner:

EXHIBIT "1."

Extract from Minutes, Nov. 1st, 1883.

A meeting of the board of directors was held at the office of the company at 12 o'clock m.

Present: The president, in the chair, and Mr. C. W. Tanner, sec'ty.

The president stated that the stock owned by J. W. Otley, sup't, had been purchased on account of the company for $50.00 per share, and that said Otley had resigned his position as sup't. On motion of Mr. Tanner the action of the president on behalf of the company in the purchase of Otley's stock was endorsed. The president further stated that the duties of superintendent would be assumed by himself and the secretary, thereby saving to the company the salary of that officer.

There being no further business, the meeting adjourned.

Approved.

JOHN TYLER, *Pres't.*

I certify that the foregoing depositions were taken & subscribed before me on the days & at the place mentioned in the captions thereof.

Given under my hand this 31st day of March, 1887.

M. F. PLEASANTS, *Comm'r.*

128 And at another day, to wit, on the 19th day of July, A. D. 1887, came the complainant, by counsel, and filed her exceptions to the foregoing report of the master commissioner in this cause. Said exceptions are as follows, to wit:

Exceptions of Plaintiff to Report of Commissioner M. F. Pleasants.

1. The plaintiff excepts to the report of the commissioner that the dividend declared 1st June, 1882, was paid out of profits. The statement made by the commissioner shows only a profit of $1,220.89, and the commissioner adds that he is convinced that mistakes were

made which if corrected would increase this sum $2,500. What these mistakes are he does not indicate, and the court cannot sustain his report on them, because there are no data given; but the statement does injustice to the plaintiff on its face. Among the assets is placed stock premium $8,486.84, which is the sum allowed Tyler and Otley for good will and formulas on the organization of the company. It is not pretended that these were worth that sum on the market, and in truth they are declared to be worthless on 1st June, 1884. If the formulas ever had any value they had it on the 1st June, 1884, and as to the good will, it never was a tangible asset.

For the purposes of a dividend, therefore, the whole of this
129 item of $8,486.84 must be stricken out. Other grounds of exception to this conclusion of the commissioner will be found in a brief of plaintiff's counsel.

2. The plaintiff's claim for $10,000.00, improperly gotten from her on stock subscription, should be added to the liabilities of the company.

3. The stock issued to Tyler and Otley was not fully paid for, as the value set upon the good will and formulas of Tyler & Co. was fictitious.

Respectfully submitted,

W. W. HENRY, *P. Q.*

And now, at this day, to wit, at a circuit court of the United States for the eastern district of Virginia held at Richmond, in said district, on the 20th day of February, A. D. 1888.

SARAH C. SAVAGE, for, &c.,
vs.
THE VIRGINIA OIL CO. & *als.*
} No. 393. In Equity.

This cause came on this day to be again heard, and was argued by counsel. On consideration whereof the court, being of opinion that the defendant John Tyler, individually, and the remaining assets of the Virginia Oil Company are liable to the plaintiff, Sarah

C. Savage, for the sum of ten thousand dollars paid by her
130 into the treasury of the company, at the instance of the said John Tyler, on the 19th day of May, 1884, for a certificate of one hundred shares of stock in said company, which said company was represented to her by the said Tyler, its president, to be in a flourishing condition, when, in fact, it was insolvent, doth so decide, and having caused a statement to be made and filed, marked (R. T.), showing how the fund of $176.24 in the Merchants' National Bank of Richmond to the credit of this cause should be distributed, doth adjudge, order, and decree that M. F. Pleasants, the clerk of this court, do draw a check upon the said fund to the credit of the court in this cause in the Merchants' National Bank of Richmond in his own favor for the sum of $88 in full of his fees and charges in this cause, and a check upon the said fund in favor of W. W. Henry, attorney for Sarah C. Savage, for $50.00, the amount of cost paid by the plaintiff in this case, and that he do check upon the said fund for the balance thereof, to wit, $33.24, in favor of the said

W. W. Henry, attorney for Sarah C. Savage, of which $20.00 is the docket fee taxed for plaintiff's attorney, and $13.24 shall be a credit on the said claim of the plaintiff for ten thousand dollars; and the court doth further adjudge, order, and decree that the defendant John Tyler do pay to the plaintiff, Sarah C. Savage, ten thousand dollars, with interest thereon, at the rate of six per centum
131 per annum, from the 19th day of May, 1884, till paid, subject to a credit of $13.24 as of this day, and that the plaintiff be at liberty to sue out execution for the same; and the report of the master is confirmed in all other respects; and the defendant John Tyler prayed an appeal from this decree in open court, which is granted, and this decree is suspended as to him for sixty days, provided he shall execute a bond in a penalty of $12,500.00, with security approved by the court and conditioned according to law.

RO. W. HUGHES, *Judge.*

132 UNITED STATES OF AMERICA, *To wit:*

The President of the United States to the judges of the circuit court of the United States for the eastern district of Virginia, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said court, before you, between Sarah C. Savage, suing for herself, &c., and The Virginia Oil Company, John Tyler, and others, a manifest error hath happened, to the great damage of the said John Tyler, as by complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington city, in the District of Columbia, on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 20th day of February, in the year of our Lord one thousand eight hundred and eighty-eight.

[Seal United States Circuit Court, Eastern District of Virginia.]

M. F. PLEASANTS,
Clerk of the Circuit Court of the United States for the Ea. District of Virginia.

[Endorsed:] No. 393. United States circuit court, east'n district of Virginia. Sarah C. Savage, suing for herself, &c., *vs.* The Virginia Oil Company, John Tyler, and others. Writ of appeal. To —— ——. Filed —— —, 186–. —— ——, clerk.

133 Know all men by these presents that we, J. Allen Tyler and John Tyler, are held and firmly bound unto the United States of America in the just and full sum of twelve thousand five hundred dollars; to the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 16th day of April, 1888.

The condition of the above obligation is such that whereas Sarah C. Savage hath lately obtained in the circuit court of the United States for the eastern district of Virginia, in a chancery suit entitled Sarah C. Savage against The Virginia Oil Company, John Tyler, and others, a decree for the sum of ten thousand dollars against the said John Tyler, to which decree the said John Tyler hath been allowed an appeal to the Supreme Court of the United States:

Now, therefore, if the above-bound John Tyler shall prosecute his said appeal to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

J. ALLEN TYLER. [SEAL.]
JOHN TYLER. [SEAL.]

134 Signed, sealed, and delivered and acknowledged before me this 16th day of April, 1888.

M. F. PLEASANTS, *Clerk.*

Approved.

RO. W. HUGHES, *Judge.*

135 UNITED STATES OF AMERICA, *Eastern District of Virginia*, } *ss*:

I, M. F. Pleasants, clerk of the circuit court of the United States for the eastern district of Virginia, hereby certify that the foregoing is a true and complete transcript of the record and proceedings in the cause in the caption of this transcript mentioned as the same remains on the files of my office.

Seal United States Circuit Court, Eastern District of Virginia.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Richmond, in the district aforesaid, this 26th day of September, 1888.

M. F. PLEASANTS, *Clerk.*

Endorsed on cover: E. Virginia C. C. U. S. No. 158. John Tyler, appellant, *vs.* Sarah C. Savage. Filed October 6, 1888.

Office Supreme Court U. S.
FILED,
DEC 5 1891
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1891.

JOHN TYLER,
Appellant,
vs.
SARAH C. SAVAGE.

No. 158.

Appeal from the Circuit Court of the United States for the Eastern District of Virginia.

BRIEF FOR THE APPELLANT.

WM. A. MAURY
Of counsel for Appellant.

R. O. POLKINHORN, PRINTER.

Supreme Court of the United States.

OCTOBER TERM, 1891.

JOHN TYLER,
Appellant,

vs.

SARAH C. SAVAGE.

No. 158.

Appeal from the Circuit Court of the United States for the Eastern District of Virginia.

BRIEF FOR THE APPELLANT.

The Bill.

This is a suit against the Virginia Oil Company for the purpose of enforcing reparation by way of damages for inducing Mrs. Savage to purchase 100 shares of the capital stock of said company by false and fraudulent representations that the company was in a sound and prosperous condition, whereas it is claimed and pretended in the bill that the company was not, at that time, in the condition represented.

The stockholders of the company are made parties to the bill for the purposes of discovery as to the manner in which they paid for their stock, and it being expresly charged, with some particularity of averment, that two of them, Tyler and Otley, who each held 50 shares of the stock, as fully paid up and of the

par value of $5000, had paid nothing for their shares, and that the claim on their part that they turned over to the company, at its organization, certain property and effects of the full value of the stock so held, is nothing less than a fraud on the creditors of the company, the said property being charged to be well nigh, if not entirely, valueless ; and one of the purposes of the bill is to compel Tyler and Otley to pay value for their stock.

The bill ignores, as illegal and void, under the law of Virginia, the sale of his 50 shares of stock by Otley to the company, through its president, Mr. Tyler, in the autumn of 1883, from which time, however, the said stock was treated as cancelled or retired, and took its place in the inventory of the assets of the company.

As has been said, the whole scheme and purpose of the bill is to enforce a *corporate* liability, and the stockholders are made parties for purposes merely ancillary to that main purpose.

THE ANSWERS.

The defendants, Otley (pp. 18, 22) and Tyler, (pp. 24-27) answered, denying, in positive terms, the imputations of fraud made in the bill against them, respectively.

REPLICATION.

The general replication to each of the answers was entered. (p. 27.)

DECREES PRO CONFESSO.

The bill was taken for confessed against the defendants Tanner, Montague and Belvin (p. 24,) and

against the Virginia Oil Company and Isaac Davenport, Jr. (p. 27.)

THE ABSENT DEFENDANTS.

The remaining defendants, Evans and Crane, being non residents of that judicial district, an order was entered that they do appear, plead, answer or demur to the bill by the first Monday of February, 1886, and that the order should be served on the said defendants, if practicable, wherever found. (p. 17.)

RECEIVER APPOINTED.

On December 19, 1885, W. W. Henry, Jr., was appointed receiver of the assets of the company (p. 16) and duly qualified as such. (p. 17.)

ORDER AS TO ABSENT DEFENDANTS AND REFERRING THE CAUSE TO A MASTER.

On May 14, 1886, the court entered an order reciting that as the non-resident defendants had not been served with process, and were not necessary parties, the suit should be proceeded in without them. (p. 29.)

By the same order the receiver W. W. Henry Jr. was, at his request, relieved of his trust and James Lyons appointed receiver in his place, who duly qualified. (pp. 30, 31.)

By the same order the cause was also referred to M. F. Pleasants, as Master, to make divers inquiries touchingthe condition of the Virginia Oil Company, at the time the complainant purchased her stock in said company, and the manner in which the several stockholders had settled for their stock, &c.

MASTER'S REPORT.

The Master filed his report on July 5, 1887 (pp. 33, 38), together with the depositions of several witnesses who were examined before him. (pp. 38, 62.)

EXCEPTIONS TO THE REPORT.

The complainant filed divers exceptions to the Master's Report (pp. 63, 64), which, however, were overruled by the court in the final decree. (pp. 64, 65.) There being no appeal from this ruling, it is unnecessary to notice these exceptions any further.

The Master's report and the depositions accompanying it will be particularly noticed hereafter, in discussing the question of fraud.

FINAL HEARING AND DECREE.

The cause came on for final hearing on February 20, 1888, and a decree was entered adjudging that the defendant John Tyler should pay the complainant $10,000., with interest, at the rate of 6 per cent. per annum, from May 19, 1884, till paid, subject to a credit of $13.24, the net amount of the assets of the Oil Company. (pp. 64, 65.)

APPEAL.

From this decree the defendant Tyler appealed.

ASSIGNMENT OF ERRORS.

The decree is deemed erroneous in this:

(1) That the record does not present a case for the exercise of the jurisdiction in equity;

(2) That the decree rendered is entirely outside of the case made in the bill, which is for the enforcement of the corporate liability of the Virginia Oil Company;

(3) That the evidence does not warrant the imputation of fraud to the defendants Tyler and the Virginia Oil Company.

(4) That the decree is devoid of support in the record.

ARGUMENT.

The first question to be considered is that of

JURISDICTION.

The only ground on which the bill can be supported against Tyler is that it contains averments to the effect that Tyler is indebted to the Virginia Oil Company on account of his stock therein, and that what is thus owing by him is a part of the assets of the company, and that the complainant has an equity to compel payment of the amount thus due, and to subject it to her claim for damages against the company.

Stripped of these averments, the bill is nothing more than a declaration in an action on the case, at law, for the recovery of damages for a false representation.

The court entered a decree appropriating what was left of the assets of the Company to the payment of the plaintiff's claim of $10,000, and directing that appellant Tyler should pay the plaintiff $10,000, subject to the credit as above, with interest, &c. The decree is silent as to all the other defendants which must be taken as equivalent to a dismissal of the bill as to them, it being the evident purpose of the court to make an end of the case by the said decree.

But as the case stands in the record with reference to the only defendant really affected by the decree, the appellant Tyler, it is wholly destitute of equity,

and therefore the court decreed on a case that was entirely beyond its jurisdiction.

The only equity the plaintiff pretended she had against Tyler was to demand that he should be compelled to pay for his stock in the Virginia Oil Company in money, it being averred that what had been claimed to be a payment for the stock was largely fraudulent and fictitious.

This contention, so persistently made, was declared by the Master to be untenable in view of the facts established before him (p. 35), and the decree confirms the Master's report over the plaintiff's exceptions on this head. (p. 65.)

This action of the Court and Master, *from which there is no cross appeal by appellee*, left the case *entirely destitute of equity against Tyler*, and the bill should have been dismissed.

If parties could give jurisdiction in equity to the United States Courts by mere averments unsubstantiated by proof, the constitutional guaranty of trial by jury would be worthless.

This court carefully protects that constitutional right from invasion by equity.

In Russell *vs.* Clark's Exec'rs. (7 Cr. 69, 89,) the court say that where the only equity in the bill is the necessity for discovery as to certain matters known to the defendant alone, and it turns out on the hearing that the answer discloses nothing, and that the plaintiff supports his case by testimony in his own possession, the hand of the court should be stayed from granting relief, as it might have done if a case within its jurisdiction had been made out, and the

bill should be dismissed. We beg to make the following extract from the opinion of Chief Justice Marshall:

"It is true that if certain facts, essential to the merits of a claim purely legal, be excusively within the knowledge of the party against whom that claim is asserted, he may be required in a court of chancery, to disclose those facts, and the court, being thus rightly in possession of the cause, will proceed to determine the whole matter in controversy. BUT THIS RULE CANNOT BE ABUSED BY BEING EMPLOYED AS A MERE PRETEXT FOR BRINGING CAUSES, PROPER FOR A COURT OF LAW INTO A COURT OF EQUITY.

If the answer of the defendant discloses nothing, and the plaintiff supports his claim by evidence in his own possession unaided by the confessions of the defendant, THE ESTABLISHED RULES, LIMITING THE JURISDICTION OF COURTS, REQUIRE THAT HE SHOULD BE DISMISSED FROM THE COURT OF CHANCERY, AND PERMITTED TO ASSERT HIS RIGHTS IN A COURT OF LAW." (p. 89.)

In Parkersburg *vs.* Brown (106 U. S. 487, 500) the Court laid down the same principle, as follows:

"The bill, as filed, asked for equitable relief, and sought to charge the city as a trustee and to reach the property covered by the deed of trust. The relief granted by the decree was a simple money judgment against the city, for the interest due on the bonds at the date of the decree, based on the legal liability of the city to pay the bonds and coupons. For this there was a plain, adequate, and complete remedy at law, in each bondholder, if the city was thus liable. So that the decree made could not be sustained in any event."

In Buzard *vs.* Houston (119 U. S. 347, 352) the court announce the same doctrine in the following words:

"In cases of fraud or mistake, as under any other head of chancery jurisdiction, a court of the United States will not sustain a bill in equity to obtain only a decree for the payment of money by way of damages, when the like amount can be recovered at law in an action sounding in tort or for money had and received. PARKERSBURG VS. BROWN, 106 U. S. 487, 500; AMBLER VS. CHOTEAU, 107 U. S. 586; LITCHFIELD VS. BALLOU, 114 U. S. 190."

In Kramer *vs.* Cohn (119 U. S. 355, 357) the principle is again stated, as follows,—

"No reason is shown for sustaining the appeal. So far as the plaintiff's claim was against Isaac Cohn personally, an action at law to recover the value of the property fradulently concealed and sold by him would afford a full, adequate and complete remedy. The only pretence for resorting to equity was the allegation that the proceeds of that property had been invested in the stock in goods of a business carried on by him in the name of the other defendant, whereby it was sought to affect the latter and the goods with a trust in favor of the creditors of Isaac, and of the plaintiff as representing them. But the proof wholly failed to support that allegation, and showed that the plaintiff had no right of action, except to recover pecuniary damages against Isaac alone. It thus appeared that the plaintiff never had any claim within the cognizance of a court of equity; and the bill was rightly dismissed generally as to the second defendant, and without prejudice to an action at law against the first defendant. DOWELL VS. MITCHELL, 105 U. S. 430; BUZARD VS. HOUSTON, ANTE, 347, just decided.

And an objection of this kind may be taken, for the first time, on appeal where there is a plain want of jurisdiction. Upon this point this Court say, in Thompson *vs.* Railroad Companies, (6 Wall., 137):

"Usually where a case is not cognizable in a Court of Equity, the objection is interposed in the first instance, but if a plain defect of jurisdiction appears at the hearing, or on appeal, a Court of Equity will not make a decree." p. 137.

"The absence of a plain and adequate remedy at law, is the only test of equity jurisdiction," say this court, in Thompson *vs.* Railroad Companies (*supra*), and, applying this touchstone to the facts in this appeal, it seems perfectly clear that a resort to a court of chancery was not necessary, the relief at law being adequate and complete. (See, also, Ins. Co. *vs.* Bailey, 13 Wal., 616.)

Added to this, the Judiciary act (Sec. 16) declares "*That suits in equity shall not be sustained in either of the courts of the United States, in any case where plain, adequate and* complete remedy may be had at law." (1 Stat., 82, Sec. 723, R. S..)

Upon this ground alone it would seem that the bill should be dismissed.

THE DECREE IS OUTSIDE THE CASE MADE IN THE BILL.

The decree holding the defendant personally liable for the ten thousand dollars paid by Mrs. Savage for her stock was a surprise as well as an injustice to the appellant, who has as fair a name as any person in the city of Richmond. Indeed, it is noticeable that the decree, in stating the deduction of the court from the evidence, does not state that Mr. Tyler had made false representations to Mrs. Savage, *knowing them to be false*, but merely says that the representations were not true; *but it did not follow, necessarily, that Tyler knew they were not true*, (p. 64). The draughtsman of that decree no doubt thought, and properly, too, that it would be a libel upon Mr. Tyler, from a moral point of view, to make the decree recite that that gentleman had wilfully misled Mrs. Savage; and in this way we may account for the remarkable omission from the decree of that necessary element of the plaintiff's case.

An examination of the bill shows that the complainant proceeded on the theory that the defendants Tyler and Otley owed the Virginia Oil Company more than $10,000 for the 50 shares of stock held by each of them, and alleged to have been paid for in a

way that was a fraud on the company and its creditors, and the tenacity with which the complainant clung to this point up to the final decree shows that she and her counsel deemed it to be well founded. The bill also claims that the defendant Otley owes the company the further sum of $2500, with interest, the same being money of the company paid him, illegally, as alleged, by Mr. Tyler, as President of the Company, for the purpose of retiring the shares of stock held by him.

It is manifest, therefore, that the plaintiff considered that she had in these and other supposed assets of the company an ample fund for the satisfaction of her demand, and that there was no necessity for pressing any claim she might have against the defendant Tyler, personally, otherwise than as a stockholder, who, she alleges, had not paid up his stock.

Tyler and all the other stockholders were made parties to the bill, because they were supposed or suspected to be debtors to the company on their stock.

If it was the intention to hold Mr. Tyler to a personal responsibility for making the representations stated in the bill, it is remarkable that not even the prayer of the bill gives indication of such a purpose. The material part of the prayer is as follows:

"Your oratrix furthur prays that an account of the assets and of the debts of the said company be taken and the said assets be realized as quickly as possible and the funds arising therefrom be paid to the creditors of the company as they may be lawfully entitled, and that the claim of your oratrix to be repaid the money she was induced to pay for the stock issued to her, with interest thereon, be established AND BE MADE A DEBT OF THE COMPANY and payment of the same be decreed to her.

That an injunction be granted restraining the Virginia Oil Company and its officers and agents from further managing or interfering in its affairs, and that a receiver be appointed to take charge of the property and effects of the said company and administer them under the direction of the court.

And that general relief be granted and all orders made that the nature of the case may require and to the court may seem meet, and that the usual writ of sp'a be issued, &c.

Is it not unaccountable that the complainant should have prayed that the amount claimed should "*be made a debt of the company*" and *not* of the defendant Tyler, also, if she had intended to go for a claim against Tyler?

It is hardly reasonable to say that the complainant proposed to urge her demand against Tyler under the prayer for general relief, because such a demand would certainly have been made the subject of a special prayer.

But no such relief was proper under the general prayer, because relief under that prayer *must be limited to the case made in the bill.*

It is true that on page 7 of the bill it is averred that the sum of $10,000. was obtained from the complainant by misrepresentations of the affairs of the company by John Tyler "its president and duly authorized agent," and that this sum had gone into the treasury of the company and been expended by it, and is justly due her with interest "*by the said Tyler and Virginia Oil Company,*" and then comes the averment that "she has a right to require *all the proper assets of the company to be gotten in and to have then applied to the liquidation of the debts due her and others,*" but not a word is said about the individual liability of Mr. Tyler *in the whole bill,* sav-

ing the casual reference just quoted, which cannot be readily explained if it was intended to enforce such a liability.

The truth is, no doubt, that it was no part of the complainant's original plan of attack to urge a demand against Tyler for the alleged fraud, and that it was not until the complainant's case against the defendants Tyler and Otley, as debtors to the company, broke down, that an attempt was made to hold Tyler personally responsible for the alleged fraud.

If any ground for enforcing a personal liability against Mr. Tyler had existed, it is inconceivable that the complainant did not sue him at law. Mr. Tyler is a man of means, and that course would have avoided the delays of a circuitous proceeding in chancery, to work out a supposed equity of the Oil Co. against him. The omission to sue him at law is apparently inexplicable, except on the theory that the pursuit of Tyler, otherwise than as an alleged delinquent stockholder, was an after-thought that occurred to complainant when her case to enforce corporate liability developed the fact that there were no corporate assets. It is also far from easy to understand why it was that if Mrs. Savage filed her bill to enforce a personal liability of Mr. Tyler to her, no reference was made to any such liability in the very particular instructions in the order of reference to the master. (pp. 29, 30.)

There is another consideration which adds great force to the above view, namely, that the learned counsel whose name is signed to the bill knew that

to have united a claim against Tyler for a fraudulent representation with a similar claim against the Virginia Oil Company would have exposed the bill *to a demurrer for multifariousness.*

The complainant had no right to urge a demand against Tyler covertly, and thereby throw him off his guard and surprise him at the last moment, when it was too late to demur for multifariousness, and the court will presume from the face of the bill that no such improper course was intended, while every doubt in the bill will be resolved against the complainant, according to the well known rule.

Upon this ground, also, the decree is invalid, being entirely outside the case made in the bill.

THE QUESTION OF FRAUD.

The complainant, who was a resident of Philadelphia, wanted to get employment for her son, in Richmond. *She sought Mr. Tyler* for that purpose, which is, by no means, an unimportant circumstance in the case. She sought him, furthermore, at the instance of Col. W. E. Tanner, one of the most prominent buisness men in Richmond.

The result of the application to Mr. Tyler was that complainant subscribed for one hundred shares of stock in the Virginia Oil Company, paying therefor the par value of $10,000, and her son was made assistant secretary of the company, or something equivalent to it.

The Virginia Oil Company is the outcome of a prosperous concern which previously did business in Richmond under the name of John Tyler & Company, the members of which were Mr. Tyler and Mr.

John W. Otley. The corporation was formed at the instance of Col. Tanner, in order to increase the capital and extend the existing business of the concern, and afford an opening for his son.

As an evidence of the somewhat reckless manner in which grave charges and imputations are made in this bill, we would call attention to the fact that it is stated therein, *under the complainant's oath*, that the claim of Tyler and Otley that their stock was fully paid up, in the way of machinery and other effects, transferred from the old to the new concern, was a gross fraud on the creditors of the company; but, as we have seen, the Master, who was sustained by the court, *dismissed the imputation as groundless*, and that disposition of it *remains unchallenged by an appeal.* Indeed, the frivolousness of this charge is too obvious to admit of debate, because it is incredible that Col. Tanner, in establishing his son in business, would have put $5000 into the company, and allowed Tyler and Otley to have an equal interest with him in the business, if the $10,000, which they claim to have put in, was, to the extent of $8,486.84, a mere fiction and fraud. (Tanner's dep., p. 41, int. 18.).

We hope to be able to show that the other charge, on which the decree is based, is equally reckless and groundless.

From the bill it would be inferred, that the Virginia Oil Company was little better than a false pretense. But when we examine the list of its stockholders we find all, except one, to be among the most prominent business men in Richmond.

Again, we find that before Col. W. E. Tanner bought 50 shares of the company's stock in the name of his son, C. W. Tanner, paying therefor the par value of $5000, he had an examination made into its affairs, by his book-keeper, but gave little or no attention to the matter himself. (p. 53.) This gentleman also testifies that, "The gentlemen connected with the firm of John Tyler & Co. seemed very enthusiastic as to the prospects of their enterprise, in which confidence, my son fully shared, and I furnished him the money more upon his judgment of the matter, as expressed by him, than upon any examination of the subject which I had been able to give myself." (p. 54.) The witness also states that, while he does not remember introducing Mrs. Savage to Mr. Tyler, he has no doubt he did so, and that "I also stated to Mrs. Savage that he [Tyler] was a gentleman of integrity and reliability, that being then my opinion of him as it is now." (p. 54.)

The court will not fail to remark the striking contrast between Mr. Tanner's bearing under the misfortunes of the company and Mrs. Savage's.

Nobody can read Mr. Tanner's deposition without being convinced that he regarded the failure of the Oil Company as free from any thing approaching fraud.

Nothing could show more convincingly the good faith of Mr. Tyler, and his real confidence in the Oil Company than the fact that when he gave his evidence the insolvent company owed him $6789.88.

He says:

"My confidence was such in the prospects for business of the company that I freely loaned money as I had it and endorsed their paper.

At the time the books were turned over to the receiver my account stands credited with $5189.88. Since which time I have paid upon my endorsement for the company, $1100.00, and still am held for $500.00 more, making the total indebtedness of the company to me $6789.88." (p. 52.)

Mr. Tyler would have wiped out every dollar of this indebtedness with the $10,000 paid by Mrs. Savage for her stock, if he had been the man he is described to be in the bill. The company owed him then $6000, but it appears that not more than $1000 of the amount paid was appropriated as a credit on that debt. (p. 47.)

That the whole $10,000, like any other money of the company, might have been used for paying the debts of the company and stopping interest, would seem clear. But Mr. Tyler did not selfishly prefer himself as a creditor, as he might have legally done, and, we repeat, as he would have done, if he had been the sort of person described in the bill.

We may, then, be pardoned for saying that, in the light of these facts, it seems absurd to impute fraud to Mr. Tyler, when, with the $10,000 paid by complainant in his hands, he allowed the Company to go down owing him nearly $7000. If he had decoyed Mrs. Savage into the Company when he knew it was insolvent, as she now says he did, can there be a doubt that he would have used her money to pay the Company's large debt to him, as he might have done lawfully?

Being in full authority as President of the Company and by acquiescence of the other stockholders, there can be no doubt that he could have acomplished

that object without any difficulty whatever, if he had been so minded.

There is another very significant circumstance in this case, and that is the omission to examine H. C. Savage, the plaintiff's son, who was an officer of the Company and, as Mr Tyler states in his answer (p. 24) "*made a thorough examination of the business of said Company and of its books and papers*, and during his conexion with the business, which continued untill its close, he did know or could have known every fact and circumstance connected therewith, and this respondent believes that he not only did know himself, but kept his mother advised of the condition of its affairs."

In view of the grave charges and imputations made in the bill it was to be expected that the plaintiff would establish them by the testimony of her son, who must have known all about the alleged frauds, if they had existed, and the failure to examine him should be taken as an admission that his evidence would not *have tended even* to sustain her serious attacks upon the character of Mr. Tyler. Indeed, this failure of the plaintiff to examine her son, without one word of explanation, is an admission that these attacks are mere unfounded aspersions, and is a conclusive reason for refusing to entertain them.

Another instance of the heedless manner in which fraud is charged in the bill is the charge that Tyler was guilty of a fraud on the Virginia Oil Company in turning over to it the assetts of the firm of Tyler & Co. at a valuation, because it "*was, in fact, a purchase by Tyler of himself, and this cannot be allowed*

when he was using the assets of the corporation in the transaction". (*p.* 6).

As it was the end and object of forming the Virginia Oil Company *to merge the concern of Tyler & Co. into that corporation*, it is difficult to understand how that could have been properly done in any other way than that pursued by Mr. Tyler, who may be excused for being indignant at this gratuitous imputation of fraud for doing his simple legal duty in carrying out the understanding between him and the other parties concerned. (pp. 18, 19, 25, 41).

The facility with which the complainant has made groundless charges of fraud in these particulars, is not calculated to inspire confidence in the main charge that Mr. Tyler entrapped her into taking 100 shares of the Oil Company's stock by deliberately false representations.

The Virginia Oil Company was organized in May 1881. Its first year was one of prosperity, and in June 1882 the stockholders declared a dividend of 13 per cent on "the captal stock of the Company owned by stockholders the first six months of the year," and a further dividend of 7 per cent on the stock owned by stockholders the last six months of the year. These dividends were declared, undoubtedly, on actual profits, for the Master "*finds that at the time of the declaration, June 1st, the Company was solvent and prosperous*," "and that the dividend was paid out of earnings". (p. 35.) And Mr. Otley says in his answer that the business of the Company up to May 1, 1882 amounted to 26 per cent on the capital invested after paying all expenses (p.19), and more than justifed the dividends (p. 20). There can be no doubt that the

enthusiasm which the gentlemen connected with the firm that was merged in the Oil Company manifested at their business prospects, on the verge of the formation of the Company, was well founded, as the first years of the Company's life showed.

Nor is there anything to justify the statement that the Oil Company was in a bad condition in April, 1884, when the pretended fraudulent statements were made by Mr. Tyler.

It is true that no dividends were declared after that in 1882; but it is to be remembered that in the latter part of 1882, the Oil Company established a soap factory, the plant for which involved an outlay of two or three thousand dollars (see W. C. Tanner's Dep. p. 42), and there was, no doubt, great promise of success in this addition to the manufacturing capacity of the Oil Company. Surely there appeared then no cause for despondency in this capitalization of profits.

It is clear that when Mr. Tyler wrote the letter of April 10, 1884 to Mrs. Savage, the condition and prospects of the Company justified all that he said in that letter. Col. W. E. Tanner, one of the first business men in Richmond, evidently shared Mr. Tyler's Opinions, or he would not have recommended the Oil Company to his friend, Mrs. Savage, as furnishing a good opportunity for investment. He must certainly have known of the condition of the Oil Company through his son, if it was then on the verge of bankruptcy, as contended by the other side.

Mr. Tyler did not set up to be a seer. He could not foresee the blow that was to come in October or

November, 1884, in the general depression of business and in the loss of the custom of the Richmond and Danville system of railroads, one of its largest and most profitable customers. (C. W. Tanner, dep. p. 41.)

Was it a fraud in him to express to Mrs. Savage hopes and expectations based on the belief that these and other railroads would continue to be customers of the Oil Company? The whole story is told by Mr. Tyler in his annual report as President of the Company, dated June 1, 1885, which is Exhibit D of the bill. He says:

"The reasons for present depression of business are variously stated by business men, but the one that has operated against our railroad trade, I think, is quite apparent; it is, in short, this:

"Purchases on the long lines of consolidated railways are now being directed by stockholders, and as controlling interests in all our Virginia railroads are owned by Northern stockholders the purchase of materials has been transferred to the North by their direction. Losing this important and profitable branch of our business has been the main cause of our failure the last half of the year to meet our expenses."

"How long this condition of things is to last the wisest of us would find it difficult to determine with any degree of certainty, but good judgment would seem to dictate that it would be better to hold on and run the business at a minimum of expense until times are better." (p. 11).

To the same effect is the answer of Mr. Otley to question 11, asking him to explain, if he could, why the company became embarrassed and lost its business afterwards. The witness said (p. 58):

"Shortly subsequent to the sale of my stock to Mr. Tyler, changing [a change in?] the ownership of the R. & D. R. R. Co. and the removal of the purchasing department of the C. & O. R. R. from this city to New York caused the loss of that business, which is the most profitable on their books. This necessitated an extra effort on their part to secure other fields and customers which was done at large ex-

pense, but with little return. Railroad companies about this time began to use some oils in which the margin of profit was very small and discontinued the use of car grease, in which the profits were very large".

Mr Tyler told Mrs. Savage, frankly, in 1884 what he thought of the then condition and prospects of the Oil Company ; and, looking at the matter from his stand point, at that time, this court will hardly say that his judgement was not reasonable and sound, let alone that it was inspired by a purpose to defraud and overreach Mrs. Savage.

Owing to the fact that the books of the Oil Company had been kept by a person who proved entirely unfit for the purpose, it baffled Mr. Tyler's skill to make a perfectly correct statement of the condition of the Oil Company for the fiscal year ending June 1, 1884. But he prepared a statement which is Exhibit A of his deposition (p. 53), and is as follows:

ASSETS.		LIABILITIES.	
Cash	$246 32	Bills payable	$10,150 43
Inventory	17,178 68	Loan of John Tyler	5,282 20
Open ac's	3,092 68	Open ac's	1,566 28
	$20,516 68		17,008 91
Actual assets over liabilities	3,507 77	Actual assets over liabilities	3,507 77
Stock premium	8,486 84		
	$11,994 61		

This statement shows that the assets of the Company exceeded its liabilities by $11,994.61, and that it was in a sound condition at the time the letter of April 10, 1884 was written by Tyler to Mrs. Savage,

and not only so, but Tyler states in his deposition that by a statement given him by the acting Superintendant C. W. Tanner "the business showed a profit over and above all expenses *for the first six months following the purchase* of stock of Mrs. S. C. Savage." (P. 46.)

In the above statement Mr. Tyler includes in the asserts 50 shares of stock which had been purchased from the defendant Otley on the Company's account. These shares are valued at par, that is to say, $5000. It appears by the inventory book (p. 48) that the item of $17,177.68 in Exhibit A is made up in part of those shares of stock. This seems entirely proper, for the 50 shares in question had been retired and the proportion of the capital of the Company represented by them could only be represented thenceforth by their money value as an asset.

But the amount paid Otley, namely, $2.500, was not necessarily the value of the stock purchased from him. His situation in the Company had become unpleasant and it is quite reasonable to suppose that he was willing to submit to a sacrifice in order to sever his connexion with it. Indeed, he says as much in his answer (pp. 19, 20).

It would seem very clear that $5.000 was not an over valuation for this stock, which was bought in October, 1883, because it is a fact in the case that Mr. Evans sold his 30 shares of stock to Mr. Crane for their par value of $,3000 on April 3, 1884, *just a few days before Mrs. Savage bought her shares* (pp 9, 34).

We beg leave to dissent entirely from the Master's alternative views that the value of Otley's stock had no place in the inventory of the Company's assets or, if it had, that it should have been valued at one half of what it was worth, that is to say the amount the company paid for it.

Whether the company was guilty of an irregularity in purchasing this stock is a matter with which we have nothing whatever to do in this suit, as the State of Virginia alone could take advantage of any such irregularity in a proper proceeding for that purpose. We must deal with the actual facts of the case in passing upon the question of fraudulent intent. The question of Mr. Tyler's guilt cannot depend on whether he was mistaken or not in the law of Virginia as to corporations.

Of a piece with the Master's opinion that the value of Otley's stock had no place in the inventory of the Company's assets is his opinion that "the formulas and recipes" which had been turned over to the Oil Company by the concern of Tyler and Company were valueless on June 1, 1884, and, therefore, no longer a part of the Oil Company's assets (p.37), and this, too, after having stated in the beginning of his report that the consideration paid by Tyler and Otley for their stock "'was the' 'good will' of the business of John Tyler & Co., *and a number of valuable receipts and formulas for the manufacture of oils and grease*, &c., (p. 34) and after having ruled and reported that complainant's contention was untenable that $8,486.84 was a fraudulently excessive valuation of the "receipts and formulas." (p. 35).

How these "*valuable receipts and formulas*" had

shrunk to nothing since May, 1881, when the Oil Company was formed, is left by the Master without one word of explanation.

It is perfectly clear that the Master, in making an inquiry as to the condition of the Oil Company in April, 1884, when the success of the Company was a daily demonstration of the value of these "receipts and formulas," was not authorized to conclude that because he supposed those same "receipts and formulas" could not be sold for anything *at public outcry* after the collapse of the company in 1885, they were valueless in 1884, or, for that matter, in 1885 either. Such a view seems perfectly absurb, if we may be pardoned for using so strong an expression.

It was out of these "receipts and formulas" that had come the success and profits of the Oil Company and the statement that they were valueless in 1884, is purely arbitrary, betraying, we think, an extreme inattention to the facts of the case.

The Oil Company, as we have seen, was gotten up by Col. W. E. Tanner, with the view of establishing his son in business; and it was agreed between him and the members of the firm of Tyler & Co. that their receipts and formulas were of the value of $8486.84. Mr. Otley says in his answer that the property of Tyler & Co., surrendered to the Oil Company, was "*fully equal in value to the par value of said stock*," (pp.19, 20), and Mr. Tyler says in his answer that the "good will and property in the business of John Tyler & Co., *was valued by the other stockholders and Col. W. E. Tanner at ten thousand dollars*, and stock of the par value of five thousand dollars was issued to this respondent and a like amount to John W. Otley." (p. 25.)

Mr. C. W. Tanner states in his deposition (Int. 18, p. 41) that he thought $5000 a fair "input" into the business for his share and as against the shares of Messrs. Otley and Tyler, and this witness also says (Int. 36, p. 43) that he considered the formula very valuable, and that it was a large inducement to him to subscribe stock in the company that bought out the owners of the formula, Tyler & Co.

All this, when taken in connexion with Tyler's denial that there was any misrepresentation to complainant (p. 25), and his testimony that in his letter of April 10, 1884, he gave what he then believed "to be a frank and true statement of the condition and prospects of the Oil Company" (p. 45), leaves, apparently, no room for doubt that Mr. Tyler is wholly innocent of any intention to deceive, and that he tells the truth in his answer, when he says:

"It is true that this respondent did inform the complainant after he had sent her the said circular, Exhibit "E," that he believed the company could pay its debts, and he believes that had it not been for the interference caused by the filing of the complainant's bill, that the assets of the company could have been so managed as to pay the debts. This respondent denies that he has made any misrepresentations to the complainant; that she may have been, and actually was, deceived in her anticipations of profits is true. This respondent was himself greatly disappointed in the results of the business, and is a far greater loser than the complainant by the disastrous results that were reached. After working for years at a merely nominal salary in order to build up a business, from which he hoped and believed large profits would be ultimately derived, he finds himself out of pocket, not only to the amount of his original stock, but a creditor of the company for a large amount."

The conduct of Mr. Tyler is irreconcilable with the hypothesis of guilt, while that of Mrs. Savage is irreconcilable with the hypothesis that she was de-

frauded by Tyler. Her son was an officer of the Oil Company from the time she became a stockholder until the company stopped business, and, as Mr. Tyler tells us (*supra*), made a thorough examination of the business of the company and its books and papers, and was in a position to know all about the affairs of the company and, no doubt, kept his mother advised of everything bearing on her interest as a stockholder, and if there had been no foundation for the statements made by Tyler in his letter of April 10, 1884, it would have been discovered by Mr. Savage and communicated to his mother, necessarily, and *yet we hear not a murmer of complaint from her until the Oil Company failed to pay a semi-annual dividend on December* 1, 1884.

By this time the company was overwhelmed by disasters which could not have been foreseen. The loss of a large and highly remunerative railroad custom, and the constant drain of ineffectual efforts to open new fields of buisness, were the causes of the bankruptcy which was precipitated, if not caused, by the institution of this suit.

After a careful examination of this record we do not hesitate to say that it is incomprehensible to us how the learned judge below could have felt warranted in putting the stigma of this decree on the appellant, who is among the most honorable and respected citizens of Richmond.

We respectfully ask that the decree may be reversed, with instructions to the court below to dismiss the bill.

WM. A. MAURY
Of counsel for Appellant.

FILED.
DEC 24 1891
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1891.

JOHN TYLER,
Appellant,

vs.

SARAH C. SAVAGE.

No. 158.

Appeal from the Circuit Court of the United States for the Eastern District of Virginia.

Brief of W. W. Henry, for the Appellee.

WARE, DUKE & TAYLOR, PRINTERS, 1208 MAIN STREET, RICHMOND.

Supreme Court of the United States.

OCTOBER TERM, 1891.

JOHN TYLER,
Appellant,

vs.

SARAH C. SAVAGE.

No. 158.

Appeal from the Circuit Court of the United States for the Eastern District of Virginia.

Brief of W. W. Henry, for the Appellee.

It is claimed that the brief filed for the appellant fails to state the full scope of the bill filed by the appellee in the Circuit Court. This will be more fully shown in the argument upon the jurisdiction of the court.

ARGUMENT.

The appellee contests the assignment of errors in behalf of the appellant, and contends—

1. The record shows a case for equitable jurisdiction.

2. That the decree complained of was based on the case made by the bill and the proofs, which last show the fraud practiced on the appellee by John Tyler, president of the Virginia Oil Company, in obtaining from her the money decreed to her against said company and Tyler, and by which they profited.

As relates to the jurisdiction:

The bill sets out a case of fraud practiced upon the appellee by John Tyler, as president of the Virginia Oil Company, in that by his letter to her, dated April 10, 1884, stating the condition of said company, and upon which she had a right to rely, he induced her to subscribe and pay for $10,000 of stock in said company, which letter, it is charged, "both by its statements and its omissions, was false and deceitful, and operated as a fraud upon her." (P. 6.) The bill further charges (p. 7) "that the sum of $10,000 having been unlawfully obtained from her by the misrepresentations of the affairs of the company by John Tyler, its president and duly-authorized agent, and the same having gone into the treasury of and been expended by the said company, the said sum, with interest thereon from 1st of June, 1884, is justly due her by the said Tyler and Virginia Oil Company, and she has a right to require all the proper assets of the company to be gotten in and to have them applied to the liquidation of the debts due her and others."

The bill further charges "that said company is insolvent, and its president, who has been its active manager, is seeking, or has secured, other business, and it is necessary that a receiver be appointed for said company, to prevent irreparable loss to those entitled to its assets." (P. 7.) This last allegation was confessed by the defendants, who not only failed to show cause against the order appointing a receiver, after having been served with an order to do so, but it is not denied in the answers filed in the case, one of which was by John Tyler. (P. 24.)

The bill further requires answers to certain interrogatories by way of discovery, among which are found (p. 8):

"6. What was the statement made to the stockholders, at the end of each fiscal year, of the condition of the company and its business by the president and directors?

"8. How was the money paid in by your oratrix for her stock expended by the company?

"9. How and when was the capital lost?"

Only John Otley and John Tyler answered the bill. Mr. Otley, in his answer to Interrogatory 6, said: "The statement made to

the stockholders June 1, 1882, is summarized in Exhibit 'A,' filed with this answer. A statement was made June 1, 1883, respondent believes, but he has no memory of it, and cannot state it. He now files, marked Exhibit 'B,' a statement dated January 1, 1883, made by an expert book-keeper, and showing the condition of the company at that time." To Interrogatories 8 and 9 he answered "he does not know."

John Tyler answered (p. 26) Interrogatory 6: "That the statements made to the stockholders were in accordance with the facts as shown by the books. Trial-sheets were regularly made out and their results were reported."

To Interrogatory 8 he answered: "That of the money paid in by the complainant, $5,000 went to meet bills payable, and the residue as shown by the books and hereinafter mentioned."

To Interrogatory 9 he answers: "That it would be impossible to say, except by a careful examination of the books, which are in the receiver's hands."

Thus both respondents refer to the books for the information sought and not given in their answers, Otley giving statements, (pp. 22, 23,) purporting to be based on said books, of the condition of the company May 31, 1882, and January 1, 1883. Tyler afterwards, when put upon the stand, produced a statement, purporting to be based on said books, as of June 1, 1884, (p. 53,) a few days after the appellee had been induced to take and pay for the said stock.

The object of these interrogatories was to discover the insolvent condition of the Virginia Oil Company at the date that the appellee was induced to subscribe to its stock, and what became of her money; and it will be demonstrated later that the information thus obtained, including the books referred to, show conclusively the insolvent condition of the company at the said date, Mr. Tyler's perfect knowledge of its condition, and his personal benefits from the use of her money.

The mode of procedure was necessary, as the recovery of the plaintiff depended on the information in the hands of the defendants; and, if it turned out that the company used the money she paid, its assets should have been first used to replace it before Ty-

ler's responsibility individually was fixed, and this was for his relief *pro tanto.*

It thus appears that there are various grounds upon which the jurisdiction of a court of equity can rest in these proceedings—

1st. On the ground of discovery, which, having been obtained, the court will proceed to give complete relief. (Story on Equity, § 64 *a.*)

2d. On the ground of account; the remedy at law being imperfect and inadequate. (*Idem*, §§ 67, 441.)

3d. On the ground of fraud, misrepresentation, and concealment. (*Idem*, §§ 184, 191; *Jones* v. *Bolles*, 9 Wall., 364, 369.)

The sixteenth section of the Judiciary Act of 1789, relied on by the appellant, has often been held by this court to be "merely declaratory, making no alteration whatever in the rules of equity on the subject of legal remedy. It is not enough that there is a remedy at law; it must be plain and adequate, or, in other words, as practical and as efficient to the ends of justice and its prompt administration as the remedy in equity." (*Boyce's Executors* v. *Gundy*, 3 Peters, 210, 215.)

When a court of equity has once properly assumed jurisdiction, it will retain the case and give complete relief, even if law had concurrent jurisdiction. (*Russell* v. *Clark*, 7 Cranch., 89.)

The authorities cited by the learned counsel for the appellant in support of his attack upon the jurisdiction of the court in this case show nothing in conflict with the principles upon which that jurisdiction rests. In the leading case of *Russell* v. *Clark* (7 Cr., 69, 89) the bill was one for discovery, and the answer disclosed nothing, while the plaintiff supported his case by testimony in his own possession. Here the discovery sought was but one ground of jurisdiction, and the answers disclosed through the books the facts sought to be discovered. (See the master's report, 36, 37.) In *Parkersburg* v. *Brown* (106 U. S., 487, 500) the relief granted was simply a money judgment against the city, and this could just as well have been obtained in a court of law, and hence the decree was not sustained. Here the relief granted was, first, a discovery; then, a settling up of an insolvent company; the cancellation of the subscription made by the plaintiff; the

application of part of the company's assets to the re-payment of the money she had paid; and a decree for the balance against the agent of the company, who had defrauded her. In *Buzard* v. *Houston* (119 U. S., 347) the court held that the plaintiff had only a money claim, recoverable at law, and none of the usual grounds of equitable relief. In the case of *Kramer* v. *Cohn* (*Idem*, 355) the plaintiff failed to sustain the only allegation on which the jurisdiction of a court of equity could be based, and had an adequate remedy at law. Here, as has been said, the grounds of equitable jurisdiction have been sustained.

The rule, therefore, that the objection to the jurisdiction must be raised in the court below, is in full force here, as the case comes under no exception as required in *Thompson* v. *R. R. Co.* (6 Wall., 137.)

The second assignment of error is that the decree is outside the case made in the bill.

This is argued by the appellant only as to the decree against Tyler individually. Recalling the extracts from the bill, heretofore given, charging fraud on Tyler, and personal liability, (found on pp. 6 and 7 of the record,) the court will find that a case is made against him, which, if proven, entitled the plaintiff to the personal decree rendered. The fact that in the special prayer for relief no mention is made of a decree against Tyler personally, or that the first object of the bill was to wind up the affairs of an insolvent company, does not invalidate the relief granted, which was under the prayer for general relief. "If the plaintiff should mistake the relief to which he is entitled in his special prayer, the court may yet afford him the relief; provided it is such relief as is agreeable to the case made by the bill." (Story on Equity Pleadings, §§ 40, &c.; *Tayloe* v. *Merchants Fire Insurance Company*, 9 How., 390, 406.) Nor is the bill multifarious because it makes a case of fraud against Tyler, agent of the Virginia Oil Company, for which it claims that he, as well as the company, is responsible to the plaintiff. The facts which proved fraud by the company also fix fraud on Tyler personally. (Cook on Stock and Stockholders, § 156; *Ashmead* v. *Colby*, 26 Conn., 287—1857.) But it is too late to rely on this ground in this court, as it was not

pleaded in the court below. (*Briges* v. *Sperry*, 95 U. S., 401, 405.)

On the question of fraud, raised in the third and fourth assignments of errors, it is submitted that the record is replete with evidence sustaining the decree.

Mr. Tyler was president of the Virginia Oil Company from its incorporation in 1881. (P. 12.) His duties at first included the financial part of the business. (Deposition of J. W. Otley, answer to cross-question 6, p. 59.) On the 1st of March, 1883, he took charge of the books of the company also. (Deposition of Tyler, answer to cross-question 35, p. 51, and of Otley, answer to cross-question 20, p. 61.) He states that the clerk employed had proved incompetent, and it was difficult to state the exact condition of the company on the 4th of June, 1883, when there was the annual meeting; but that some statement was made from the best data that could be obtained. (Deposition of Tyler, answer to cross-question 36, p. 51.) In his answer to Interrogatory 6, calling for the annual statements of the condition of the company, made by him to the stockholders, he says: "These statements were in accordance with the facts shown by the books. Trial balance-sheets were regularly made out and their results were reported." (P. 26.) The trial-sheet for the year ending June 1, 1883, is not given, but we are able to get at it approximately from the data given by the merchandise account and the testimony. It appears by the report of the master, (p. 35,) that at the end of the first year's operations—to-wit, on June 1, 1882—the Virginia Oil Company had made a profit, as appeared by the books, of $1,220 89
And, adding for mistakes in books, 2,500 00

A total profit of, say $3,720 89
Then there was paid a dividend of 3,270 00

Leaving a balance of profits of $ 450 89
For the year ending 1st of June, 1883, the gross profits from sales, after deducting cost of goods, was (p. 50), not including rent and salaries (p. 48), $12,756.41, less $9,823.61—to-wit, 2,932 80

$3,383 69

Not enough to pay one item of expense—to-wit, salaries of Tyler, Otley, and Tanner (p. 26), $4,500 00

We can get at the condition of the company on the 10th of April, 1884, when Tyler wrote to Mrs. Savage, by examining his statement as to its condition on the 1st of June, 1884. (P. 53, Exhibit 'A,' and deposition—answer to cross-question 9, pp. 47, 48.)

In the statement of Tyler, (at p. 53,) he places among its assets—cash,	$	246 32
Which he admitted was an error, being a double credit (answer to cross-question 10, p. 48). He also improperly included in the inventory the fifty shares bought by him of Otley, valuing them at		5,000 00
Thus making erroneous items of assets,	$	5,246 32
As the $2,500 paid for Otley's stock had been charged to the company on Tyler's account with it, that must be deducted from the above,		2,500 00
Leaving net errors to be deducted,	$	2,746 32
As there had been no losses reported between the 10th of April, 1884, and 1st of June, 1884, to get at the condition of the company at the date of Tyler's letter to appellee, we must deduct from the assets the $10,000 the appellee thus paid to the company for her stock,		10,000 00
Total deductions of assets, as of 10th of April, 1884,		$12,746 32
From this take Tyler's estimated excess of assets (p. 53),		3,507 77
And the deficit of assets is	$	9,238 55
If we take from this the fanciful stock premium claimed by Tyler (p. 53), which was the amount allowed him and Otley on organization for good will, formulas, &c., (p. 4,)		8,486 84
We still have the company owing, beyond its assets,	$	751 71

This, too, is after crediting the company with of open accounts as solvent, many of which could not be collected, (see receiver's reports, pp. 28 and 32,) and also crediting the machinery and fixtures at		$ 3,092 68 5,794 49
while they only brought $866.90.		$ 8,887 17

It thus appears that when John Tyler represented to Mrs. Savage that this company was in a prosperous condition, it was utterly insolvent, and this he admits in this case by failing to except to the master's report, that on June 1, 1884, "the company had lost its entire cash-paid stock, being largely indebted beside. The formulas and recipes purchased for $8,486.84 were then, and have been ever since, without value, or at least unsaleable. In a word, the company was bankrupt." (P. 37.)

This bankruptcy, now admitted by the appellant, must have been known to him on the 10th of April, 1884, he having been not only the financial agent, but also book-keeper of the company for more than a year; engaged in straightening up and keeping straight the books (answer to cross-question 37, p. 52). Indeed, he had prevented the declaration of any dividend for two years, on the ground that the condition of the company did not warrant it; and in October, 1883, he had offered his stock to Otley for fifty cents on the dollar. He had, it is true, endorsed for the company, and advanced it money; but this, undoubtedly, commenced early, and was done from time to time in the hope that a turn for the better would come in the affairs of the company.

An examination of his account, however, discloses the fact that he had actually loaned in money but little which was not repaid him out of the money paid in by Mrs. Savage. On June 1, 1884, he was credited by (p. 53), $ 5,292 20

This was made up of indebtedness of John Tyler & Co. to John Tyler, assumed by the Oil Company, (see answer of Tyler to cross-question 33, p. 51,)	$ 1,647 15	
Dividend declared 1st of June, 1882, and credited to John Tyler, (p. 53,)	1,000 00	

Amount improperly charged to company for purchase of Otley's stock,	2,500 00	
		5,147 15
Leaving only balance of cash advance,		$ 145 05

But not only did Tyler deceive Mrs. Savage by falsely stating that the Virginia Oil Company was in a prosperous condition, but he also deceived her by the suppression of the truth regarding the dividend previously declared. He wrote her the 10th of April, 1884: "The last dividend declared was a 7 per cent. semi-annual. The fiscal year ends 1st of June." (P. 9.) This was evidently designed to produce the impression, which it did produce, that there had been a semi-annual dividend declared at the end of the previous fiscal year of 7 per cent. The truth that such a dividend had been declared the 1st of June, 1882, and nothing afterwards, was suppressed; and, in what purported to be a truthful statement of the condition of the company, this suppression of a material fact, which Tyler was in good faith bound to disclose, is equivalent to a false representation, and renders him liable to an action of deceit. (*Stewart* v. *Wyoming Ranche Co.*, 128 U. S., 383, 388.)

The fraud perpetrated on Mrs. Savage by Tyler enured directly to his own personal advantage. Not only was he, as a large stockholder and salaried officer, benefitted by the payment into the treasury of the company of this large sum of $10,000, exceeding the money theretofore paid in for stock, but, by the report of the master (p. 37), not excepted to, $4,900 of the amount paid in by Mrs. Savage went to the payment of notes of the insolvent company, on which Tyler was bound; $1,000 went to pay an individual note of said Tyler, and $300 to the re-payment to him of a recent loan to the company. Thus $6,200 of the $10,000 went directly to the benefit of Mr. Tyler, and the balance of $3,800, as he states (p. 47), "went to the purchase of material and ordinary expenses of the company," which enabled the insolvent company to continue the payment to him of his salary for more than a year longer. This personal gain to Mr. Tyler is ample ground to render him personally liable, if anything in addition to his fraudulent representation was needed.

The learned counsel for the appellant attempts to shield Tyler from the imputation of fraud by a statement of his high character. This is a common resort where crime is imputed, but is always evidence of the weakness of the defence on the facts.

Again, the learned counsel attempts to prejudice the case of the appellee because of her failure to examine her son as a witness, who, it is alleged, was in a position to know the condition of the company. But this, if even true, could have no bearing on the questions of fraud raised.

The appellee had subscribed and paid in her money before her son, an inexperienced youth, was given employment in the company, and any knowledge that he might have obtained came too late.

As the learned counsel also insists that the face value of Otley's stock ($5,000) was properly included by Tyler among the assets of the company, it may be as well to call the attention of the court to the deposition of Otley, (answer to question 5, p. 58,) in which he denies that he sold to the company, and to the fact that the purchase was not previously authorized by the company, and was never approved by the directors or company, the only attempt at such approval being at an illegal meeting of the directors the 1st of November, 1883, (p. 63,) at which only two were present—Tyler and C. W. Tanner—less than a legal quorum. (Deposition of Tyler, answer to cross-questions 2 and 3, p. 55.) This is also the report of the master, not excepted to. So it appears that this stock was never properly taken by the company, and remained the stock of John Tyler, who had used his own funds in the purchase. But if it had been properly bought for the company, and not cancelled, it could not be counted as an asset of the company for more than its true value, which could not exceed $2,500, the price fixed upon it by both Otley and Tyler—to the former of whom it was more valuable than to any one else, because its ownership carried with it the right to hold an office worth $1,500 a year. (Answer of Tyler to question 13, p. 46.)

It is respectfully submitted, therefore, that the decree complained of should be affirmed, with costs.

W. W. HENRY,
Counsel for the Appellee.